(18,943.)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1903.

No. 292.

THE SAN FRANCISCO NATIONAL BANK, APPELLANT,

vs.

WASHINGTON DODGE, AS ASSESSOR OF THE CITY AND COUNTY OF SAN FRANCISCO.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

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In the Circuit Court of the United States, Ninth Circuit, Northern District of California.

THE SAN FRANCISCO NATIONAL BANK (a National Banking Association),

Complainant,

vs.

WASHINGTON DODGE, as Assessor, of the City and County of San Francisco, State of California.

Respondent.

Bill of Complaint.

To the Judges of the Circuit Court of the United States, for the Northern District of California, in the Ninth Circuit, Sitting in Equity:

The San Francisco National Bank, a national banking association, organized and existing under and by virtue of the laws of the United States, brings and files this its bill of complaint against Washington Dodge, as assessor of the city and county of San Francisco, State of California, and thereupon humbly complaining your orator, The San Francisco National Bank, shows your Honors as follows:

First.—That your orator is, and at all the times hereinafter mentioned was, a national banking association, formed, organized, and existing under and by virtue of the laws of the United States for carrying on the busi-

ness of banking, as provided for and authorized by the provisions of the statutes of the United States in this behalf. That it has its banking house and principal place of business where its operations of discount and deposit are carried on and where its general business is conducted, as authorized and provided for in its articles of association, in the city and county of San Francisco, State of California. That the capital stock of your orator is $500,000, divided into 5,000 shares of the par value of $100 each, and certificates for all of said shares are outstanding and are owned by a large number of persons.

Second.—That the respondent, Washington Dodge, is the duly elected, qualified, and acting assessor of the city and county of San Francisco, State of California, and that the said respondent, as such assessor, is a citizen and a resident of the said State of California, and is a resident and an inhabitant of the said Northern District of California, and is the person and officer, under and by virtue of the laws of the State of California, authorized, as hereinafter more particularly set out, to assess taxes for and in the said city and county of San Francisco.

Third.—That by an act of the legislature of the State of California, approved March 7, 1881, entitled "An act to amend the Political Code of the State of California, relating to revenue, by adding a new section to be known as section 3608 of said code, and by amending sections 3607, 3617, 3627, 3629, 3650, and 3651, and 3652, of said code, and by repealing section 3640 of said code, all relative to revenue," there was, among other things, on said

7th day of March, 1881, added to the Political Code of the said State of California a new section, numbered 3608, in the words and figures following, to wit:

"Shares of stock in corporations possess no intrinsic value over and above the actual value of the property of the corporation which they stand for and represent, and the assessment and taxation of such shares and also of the corporate property would be double taxation. Therefore all property belonging to corporations shall be assessed and taxed, but no assessment shall be made of shares of stock, nor shall any holder thereof be taxed therefor."

That by an act of the legislature of the 14th day of March, 1899, entitled, "An act to amend section thirty-six hundred and eight of the Political Code of the State of California, relating to the general revenue of the State, and to property liable to taxation for the purpose of revenue; and to add new sections, to be known as sections thirty-six hundred and nine and thirty-six hundred and ten, also relating to the general revenue of the State; and to property liable to taxation for the purpose of revenue," said section 3608 was, on said 14th day of March, 1899, amended so as to read as follows:

"3608. Shares of stock in corporations possess no intrinsic value over and above the actual value of the property of the corporation which they stand for and represent; and the assessment and taxation of such shares, and also all the corporate property, would be double taxation. Therefore, all property belonging to corporations (save and except the property of national banking associations not assessable by federal statute),

shall be assessed and taxed. But no assessment shall be made of shares of stock in any corporation (save and except in national banking associations, whose property, other than real estate, is exempt from assessment by federal statute)."

That by said act of March 14, 1899, there were, on said 14th day of March, 1899, added to the said Political Code of the State of California, two new sections numbered respectively 3609 and 3610, and being respectively in the words and figures following, to wit:

"3609. The stockholders in every national banking association doing business in this State, and having its principal place of business located in this State, shall be assessed and taxed on the value of their shares of stock therein; and said shares shall be valued and assessed as is other property for taxation, and shall be included in the valuation of the personal property of such stockholders in the assessment of the taxes at the place, city, town, and county where such national banking association is located, and not elsewhere, whether the said stockholders reside in said place, city, town or county, or not; but in the assessment of such shares, each stockholder shall be allowed all the deductions permitted by law to the holders of moneyed capital in the form of solvent credits in the same manner as such deductions are allowed by the provisions of paragraph six of section thirty-six hundred and twenty-nine of the Political Code of the State of California. In making such assessment to each stockholder, there shall be deducted from the value of his shares of stock such sum as is in the same proportion to such value as the total

value of its real estate and property exempt by law from taxation bears to the whole value of all the shares of capital stock in said national bank. And nothing herein shall be construed to exempt the real estate of such national bank from taxation. And the assessment and taxation of such shares of stock in said national banking associations shall not be at a greater rate than is made or assessed upon other moneyed capital in the hands of individual citizens of this State.

"3610. The assessor charged by law with the assessment of said shares shall, within ten days after he has made such assessment, give written notice to each national banking association of such assessment of the shares of its respective shareholders; and no personal or other notice to such shareholder of such assessment shall be necessary for the purpose of this act. And in case the tax on any such stock is unsecured by real estate owned by the holder of such stock, then the bank in which said stock is held shall become liable therefor; and the assessor shall collect the same from said bank, which may then charge the amount of the tax so collected to the account of the stockholder owning such stock, and shall have a lien, prior to all other liens, on his said stock, and the dividends and earnings thereof, for the reimbursement to it of such taxes so paid."

Fourth.—That under and by virtue of the constitution of the said State of California, all property not exempt from taxation under the laws of the United States and under the laws of the said State of California in the possession or under the control of any person at twelve o'clock M. on the first Monday in March of each year, is

subject to assessment and taxation, as by the laws of the said State of California provided, for the fiscal year ending on the 30th day of June of the next succeeding year, as hereinafter more particularly set out.

Fifth.—That pursuant to the requirements of the Revised Statutes of the United States, the President and cashier of your orator have at all times caused to be kept, and do now keep, in the office where the business of your orator is transacted, to wit, at its said office in the said city and county of San Francisco, a full and correct list of the names and residences of all of the shareholders of your orator, said list containing the number of shares held by each of said shareholders. That said list during all of the times herein mentioned has been and is, during business hours of each day in which business could have been or may be legally transacted, subject to the inspection of the respondent, and that on or about the 12th day of March, 1900, your orator, at the request of the respondent, gave and delivered to the respondent a full and correct list of the names and residences of the shareholders of your orator as the same existed at twelve o'clock M. on the 5th day of March, 1900; said 5th day of March, 1900, being the first Monday in March, 1900, and said list containing and showing the number of shares held by each of said shareholders at twelve o'clock M. on said 5th day of March, 1900; that the number of said shareholders at twelve o'clock M. on said first Monday in March, 1900, was seventy-seven.

Sixth.—That under the provisions of the constitution of the said State of California the fiscal year in the said State of California is from the first day of July of each

year to the thirtieth day of June of the next succeeding year, and that under and in pursuance of acts of the legislature of the State of California, and in conformity thereto, and under and in pursuance of various municipal orders and ordinances of the city and county of San Francisco, and in conformity thereto, the board of supervisors of the said city and county of San Francisco did, on the third Monday in September, 1899, levy a tax for the purposes of the said city and county of San Francisco for the fiscal year ending June 30th, 1900, on all property both real and personal in the said city and county of San Francisco (excepting such property as is by law exempt from taxation), of the sum of one dollar and two cents and nine mills ($1.029) on each one hundred dollars' valuation of said taxable property upon the assessment-books of said fiscal year; and that the State Board of Equalization of the said State of California, pursuant to the laws of the said State of California, fixed the rate of taxation for the purposes of the said State of California on all assessable property in the said city and county of San Francisco for the said fiscal year ending June 30th, 1900, at the rate of sixty cents and one mill ($.601) on each one hundred dollars' valuation of taxable property in the said city and county of San Francisco; and that the said board of supervisors on the said third Monday in September, 1899, under and in pursuance of the Political Code and of the statutes of the State of California, and in conformity thereto, and in pursuance of the said action of the said State Board of Equalization, and in conformity thereto, did levy a tax for State purposes for said fiscal year ending June

30th, 1900, on all property, both real and personal, in the said city and county (except such property as is by law exempt from taxation), of the sum of sixty cents and one mill ($.601) on each one hundred dollars' valuation of said taxable property upon the assessment-roll for said fiscal year; the combined rate of taxation for said fiscal year for State and city and county purposes amounting to the sum of one dollar and sixty-three cents ($1.63) on each one hundred dollars' valuation of taxable property in the said city and county of San Francisco.

Seventh.—That under and by virtue of the laws of the said State of California, every tax due upon personal property is a lien upon the real property of the owner of such personal property, from and after twelve o'clock M. of the first Monday in March of each year; and that under and pursuant to the said laws of the said State of California the respondent claims the right, when any taxes on personal property are not a lien upon real property sufficient to secure the payment thereof, to collect all such taxes between the first Monday in March and the third Monday in July of each year; and under said laws said respondent claims the power to make such collection by seizure and sale of any personal property owned by the person against whom such tax is assessed, said sale to be of an amount of such personal property sufficient to pay the taxes, the percentage thereon provided by law, and the costs of sale; and that, under and by virtue of said laws the respondent is governed as to the amount of taxes to be collected on such personal property by the State and city and county rate of taxation for the previous fiscal year; that under and pursuant

to the provisions of the said section 3610 of the said Political Code and in and by said section, it is provided that in case the tax on any stock in a national bank is unsecured by real estate owned by the holder of such stock, then the bank in which said stock is held shall become liable therefor, and the respondent in and by said section is directed to collect such tax from such bank.

Eighth.—That on said first Monday of March, 1900, to wit, on March 5th, 1900, at twelve o'clock M. of said day, your orator did not own, thence hitherto has not owned, and does not now own, any real estate, either in the city and county of San Francisco, State of California, or elsewhere.

That on said first Monday of March, 1900, to wit, on March 5th, 1900, at twelve o'clock M. of said day, your orator held and owned the following personal property: $50,000 of bonds of the United States; the premium on said bonds having on said day and at said time been the sum of $4,800, making the said $50,000 of United States bonds with the premium thereon equal to the sum of $54,800; $175,748 in cash; furniture of the value of $5,450; solvent credits over and above the debtc due and owing by your orator amounting to the sum of $343,663.-32; redemption fund $2,250; all of said hereinbefore enumerated property being exempt from assessment and taxation under the laws of the United States and of the State of California; the said property being all of the assets and property owned and held by your orator at twelve o'clock M. on said 5th day of March, 1900.

Ninth.—That the respondent has notified and informed your orator and the respective stockholders of

your orator, that he is about to assess, and your orator verily believes that unless restrained by the order of this Honorable Court, he will, under and by virtue of the aforesaid act of the legislature of March 14th, 1899, amending certain sections of the Political Code of the State of California as hereinbefore set forth, and not otherwise, assess the shares of the capital stock of your orator at a valuation of $104.36 per share for each and every share of the capital stock of your orator; and in case the tax on any of such stock is unsecured by real estate owned by the respective holders of such stock, then and in that event, the respondent threatens to, and, as your orator verily believes, unless restrained by the order of this Honorable Court, he will, collect, as provided in and by section 3610 of the said Political Code, the amount of such tax from your orator at the hereinbefore alleged rate of taxation of $1.63 on each one hundred dollars of the said valuation of said stock at $104.36 per share. That the amount of such tax at the said rate of $1.63 upon each one hundred dollars' valuation of said stock at $104.36 per share, will be the sum of $1.701068 upon each share of said capital stock. That on said 5th day of March, 1900, at twelve o'clock M. of said day, the taxes upon 1775 shares of said capital stock were, ever since have been and now are, unsecured by real estate owned by the holders of such stock; that the taxes for the said fiscal year ending June 30th, 1901, at the said rate of $1.63 upon each one hundred dollars' valuation of $104.36 for each of said 1775 shares of stock will be the sum of $3,019.39. That said respondent has notified and informed and threatened your orator that said sum

of $3,019.39 will be collectible from your orator, and that, unless restrained by the order of this Honorable Court, he will enforce payment and collection of said sum of $3,019.39 from your orator; and your orator verily believes that said respondent, unless restrained therefrom by the order of this Honorable Court, will carry out and execute his aforesaid threats to make said assessment upon the capital stock of your orator as hereinbefore stated, and to enforce collection and payment of the sum of $3,019.39 as and for the tax on 1775 shares thereof, of and from your orator as hereinbefore stated.

Tenth.—That your orator is informed by said respondent, and verily believes, and upon and according to such information and belief charges the fact to be, that said respondent, unless restrained therefrom by the order of this Honorable Court, in making said assessment upon the shares of the capital stock of your orator, will make the same in the manner following, that is to say: He will add together

(1) The amount of the paid up capital of your orator, to wit, the sum of..... $500,000

And (2) The amount of the undivided profits of your orator, as the same are by the respondent claimed to have existed at 12 o'clock M. on the 5th day of March, 1900, to wit, the sum of..... 77,260

And together amounting to the sum of. $577,260

That from said sum of $577,260, he will deduct

(1) The bonds of the United States, to secure the circulation of your orator, as

owned by your orator at twelve o'clock M. on said 5th day of March, 1900, and amounting to the sum of...$ 50,000

And (2) The value of the furniture of your orator, as by the respondent claimed to have been owned by your orator at 12 o'clock M. on said 5th day of March, 1900, and amounting to the sum of... 5,500

And together amounting to the sum of.$ 55,500

Leaving a balance, after deducting from.....$577,260

the sum of..... ... 55,500

Of.....$521,760

That he will divide the said sum of $521,760, by 5,000, being the total number of the shares of the capital stock of your orator, with the result that each five thousandth part of said sum of $521,760 will be the sum of $104.352; which said sum of $104.352 said respondent claims to be the assessable value per share of each share of the capital stock of your orator, and which said sum of $104.352 for purposes of assessment and taxation for the said fiscal year ending June 30th, 1901, the said respondent threatens to and will treat as $104.36, as the assessable value per share of each share of the capital stock of your orator.

Eleventh.—That the said assessment and taxation, so as aforesaid threatened to be made and levied by the respondent upon the shares of the capital stock of your orator, will be in violation of, and repugnant to, the provisions of sections 5219 and 1977 of the Revised Stat-

utes of the United States, in that the said assessment and taxation will be at a greater rate than is or will be assessed upon other moneyed capital in the hands of individual citizens of the said State of California. And in that behalf your orator shows that under and by virtue of the laws of the said State of California, all shares of stock in corporations organized under the laws of the said State and amounting to more than the sum of two hundred million dollars ($200,000,000), and especially in corporations organized under the laws of the said State for the purpose of banking, all shares of stock thereof and amounting to more than the sum of thirty-five million dollars ($35,000,000), are expressly exempt from assessment and taxation, and the same are not subject thereto, and that the respondent has not assessed and will not assess, for the said fiscal year ending June 30th, 1901, and does not intend to assess, to the holders of shares in corporations organized under the laws of the said State of California, the value of the same, or to collect from such shareholders any taxes on said shares or the value thereof.

And your orator further shows that the said pretended assessment and taxation so as aforesaid threatened to be made and levied by the respondent upon the shares of the capital stock of your orator, will be in violation of, and repugnant to, the provisions of said section 5219 of the Revised Statutes of the United States, in that the said taxation will be at a greater rate than will be assessed upon other moneyed capital in the hands of individual citizens in the State of California. And in that behalf your orator further shows that in assessing and

taxing the said shares of the capital stock of your orator no deduction will, or can legally, be made from the valuation of said shares, or any of them, of debts unsecured by deed or trust, mortgage or other lien on real or personal property due or owing by the stockholders of your orator, or by any of them, to bona fide residents of the State of California; and that in assessing and taxing other moneyed capital in the form of solvent credits unsecured by deed of trust, mortgage or other lien on real or personal property, due or owing to, or in the hands of, individual citizens in said State of California, the respondent does and will make a deduction from said credits, under and by the constitution and laws of the State of California, of the debts unsecured by trust deed, mortgage or other lien on real or personal property as may be owing by such individual citizens, or by any of them, to bona fide residents of the State of California, and that said threatened assessment and taxation of the shares of your orator is, and will be unjust, unlawful and illegal, and will discriminate against and upon such shares and against and upon the persons owning and holding the same, and will compel them to sustain and bear more than their just share and burden of the taxes of the said State of California. And in this behalf your orator further avers that it is informed and believes, and upon such information and belief states the fact to be, that the amount of moneyed capital in the City and County of San Francisco in said State of California on the first Monday of March, 1900, to wit, on March 5th, 1900, at noon of said day, invested by banks and bankers, having their principal place of business in

said city and county, and residents therein, in unsecured solvent credits, and from which, under the constitution and laws of said State, unsecured debts can be deducted, was the sum of $14,074,561; and on the day and year last aforesaid, the amount of moneyed capital in the State of California, other than in the said City and County of San Francisco, invested by banks and bankers in unsecured solvent credits, and from which, under the constitution and laws of said State unsecured debts can be deducted, was the sum of $7,589,302; that on the day and year last aforesaid, said banks and bankers at said City and County of San Francisco had debts unsecured by trust deed, mortgage or other lien on real or personal property owing by such banks and bankers in said city and county amounting to the sum of $36,710,062; and that on said day last aforesaid, the amount of debts unsecured by trust deed, mortgage or other lien on real or personal property owing by said banks and bankers in the State of California, other than in the said City and County of San Francisco, was the sum of $32,400,304. That the amount of moneyed capital invested in such solvent credits by such banks and bankers on the day and year last aforesaid in said City and County of San Francisco and in said State of California, as compared with the amount of moneyed capital invested in the shares of the capital stock of your orator, is so large and substantial that the assessment and taxation of the shares of the capital stock of your orator without deducting therefrom and without being able to deduct therefrom debts unsecured by trust deed, mortgage or other lien on real or personal property, as may have

been owing by the respective holders of the shares of the capital stock of your orator, on the day and year last aforesaid, will be an illegal and unjust discrimination against the owners and holders of the shares of the capital stock of your orator, and will make the taxation of said shares of stock at a greater rate than is imposed upon other moneyed capital in the hands of individual citizens in the State of California, and particularly in the City and County of San Francisco, in said State. And in this behalf your orator further avers that the said solvent credits so held as aforesaid by banks and bankers in the said City and County of San Francisco and in the said State of California are moneyed capital in the hands of individual citizens of the State of California which enter into competition for business with your orator.

Twelfth.—That in the making of the said assessment of the said shares of the capital stock of your orator, the respondent will not proceed in the manner directed by the said act of March 14th, 1899, in this: That the said respondent, as hereinbefore set out, will ascertain and determine the value of each of the shares of the capital stock of your orator to be the sum of $115.452, and will deduct therefrom the sum of $11.10 per share as the proportionate amount per share of the value of the United States bonds held by your orator to secure its circulation, and of its furniture, and will, as hereinbefore set out, assess to the stockholders the sum of $104.36 per share as the value of each share of said capital stock by the said respondent claimed to be subject to assessment and taxation under the provisions of said act of

March 14th, 1899, and that the respondent will wholly fail and refuse to make any other or further deductions from such ascertained value of said shares, in order to determine the assessable value thereof, whereas, by the provisions of said section 3609 of the Political Code of the State of California, under and in pursuance whereof the respondent has threatened and intends to make the said assessment and will proceed to demand and will attempt to collect the taxes aforesaid, he was and is required to deduct from the value of each share of the capital stock of your orator, such sum as is in the same proportion to such value as the total value of the real estate and property of your orator exempt by law from taxation bears to the whole value of all the shares of the capital stock of your orator. That on the first Monday of March, 1900, to wit, on March 5th, 1900, at twelve o'clock M. of said day, your orator had not, and thence hitherto has not had, nor has it now, any real estate, and as in paragraph "Eighth" hereof averred, all of the property of your orator consisted on said day and at said time, and has thence hitherto consisted, and does now consist of its bonds, money on hand, credits, furniture and other personal property, and on said day and at said time the same constituted and were, and thence hitherto have been, and now are, the assets of your orator, and were and are used and employed by it in the conduct and carrying on its business as a national banking association under and by virtue of the provisions of the act of the Congress of the United States known as the National Bank Act, and were and are exempt by law from assessment and taxation. That if deduction of all

the property of your orator exempt from assessment and taxation as last aforesaid were made to each stockholder in assessing said stock there would remain nothing of value subject to assessment and taxation, and that the pretended assessment and taxation of said shares at said value of $104.36 per share would be based wholly upon supposed and fictitious property and upon property exempt by the Constitution and laws of the United States from assessment and taxation.

Thirteenth.—That in and by said section 3610 of said Political Code, it is provided that in case the tax on any stock in a national bank is unsecured by real estate owned by the holder of such stock, then the bank in which said stock is held shall become liable therefor and the assessor shall collect the same from said bank which may then charge the amount of the tax so collected to the account of the stockholder owning such stock, and shall have a lien prior to all other liens on said stock and the dividends and earnings thereof for the reimbursement to it of the taxes so paid. That the ownership of the shares of the capital stock of your orator or of any of them may and does change by the endorsement and transfer of the certificate or certificates representing a given number of said shares without there being any change in the name or names in which the said certificate or certificates stand on the books of your orator. That while the shares of stock of your orator on the first Monday of March, 1900, at noon of said day, may have been owned as the same appear upon the books of your orator and as the names of the owners thereof appear in the list of stockholders kept by your

orator as hereinbefore alleged, yet intermediate that day and the day when the respondent may call upon and demand payment of your orator of the taxes to be levied upon such shares of stock upon said assessment, the ownership of said shares of stock may have wholly changed; so that while your orator may have known who the owners of said shares of stock were on the first Monday of March, 1900, at noon of that day, yet at the time a demand upon your orator for the payment of said tax by said respondent is made, your orator may be wholly unable to discover who are the owners of the same or to whose account the amount of such tax so paid will or can be charged; and such owners may by that time have altogether ceased to have any account with your orator or to hold or own any of the stock of your orator, and there may be neither shares of stock nor dividends from which your orator can deduct or withhold payment of the amount of said tax in case it pay the same.

That should your orator be compelled by said respondent to pay said tax upon the stock of its stockholders as aforesaid, it would be impossible for your orator to charge the amount of said tax to the accounts of the respective stockholders owning said shares of stock, inasmuch as your orator may be wholly unable to know who were the real owners of such shares of stock, or of any of them, or who or what stockholders were legally liable for the amount of such tax by reason whereof the amount of said tax would be irretrievably lost to your orator.

That if your orator should pay the amount of said tax so as aforesaid threatened to be levied, imposed and de-

manded by said respondent as aforesaid, and should attempt to charge the proportionate amount thereof to the persons in whose names the said shares of stock stood on the first Monday of March, 1900, to wit, on March 5th, 1900, at noon of said day or at any other time, on the books of your orator, according to the number of shares standing in the name of each person, your orator would be subjected to and would be harassed by a great multiplicity of suits by and on behalf and at the instance of the several stockholders of your orator. And in this behalf your orator shows that any one or more of said stockholders would have the right of resisting and contesting the payment of any tax on any share or shares of the capital stock of your orator owned by such stockholder, and would have the right to show that at twelve o'clock noon of said first Monday of March, 1900, he was not legally liable therefor, and that your orator had made payment of the said tax in its own wrong in case it should have paid the same, and in case it should result that your orator had made illegal payment of the said tax such illegal payment would constitute a breach of trust and illegal diversion of the corporate assets of your orator from the trust upon which it holds the same for the benefit of its creditors and stockholders.

Fourteenth.—That the said threatened seizure and sale by the respondent of personal property of and belonging to your orator sufficient to raise the amount necessary to pay said sum of $3,019.39, will, unless restrained by order of this Honorable Court, deprive your orator of its property without due process of law, and that the said threatened assessment and taxation and threatened seiz-

ure and sale are and will be contrary to and in violation of and repugnant to the rights and privileges of your orator and of the stockholders of your orator, under and pursuant to the provisions of the constitution and laws of the United States, and under and pursuant to the provisions of the constitution and laws of the State of California, and particularly under and pursuant to the provisions of section 1 of article XIV of the Amendments of the Constitution of the United States and under and pursuant to the provisions of the act of the Congress of the United States known as the National Bank Act and under and pursuant to the provisions of section 1 of article XIII of the Constitution of the State of California.

That said act of the legislature of the State of California of March 14th, 1899, under and pursuant to which said respondent is claiming to act and is acting and threatening to make said seizure and sale, is repugnant to and in violation of the rights and privileges of your orator and of the stockholders of your orator, under and pursuant to the provisions of the constitution and laws of the United States, and particularly under and pursuant to the provisions of section 1 of article XIV of the Amendments of the Constitution of the United States and under and pursuant to the provisions of the act of Congress of the United States known as the National Bank Act, and under and pursuant to the provisions of section 1977 of the Revised Statutes of the United States.

That if the provisions of said act of the legislature of March 14th, 1899, were constitutional and legally valid, your orator would thereunder be protected only in pay-

ing the tax of the stockholder or stockholders who owned stock of your orator at twelve o'clock noon on said first Monday of March, 1900, and who did not own real estate to secure the payment of the same, and would not be protected in paying said tax, or any part thereof, where, at the time of the payment by your orator of the taxes on such shares, such shares had theretofore actually changed in ownership and had become the property of any person or persons other than and different from those persons owning it at twelve o'clock noon on said first Monday of March, 1900, or had become the property of any person or persons who at the time of payment of such tax by your orator might own real estate to secure the payment of the tax on said shares of stock, the ownership of said real estate by such stockholders being unknown to your orator at the time of making such payment. By reason of all of which your orator would be involved in great doubt and uncertainty as to its rights and duties in the premises and would be exposed to the possibility of a great multiplicity of litigation, to the loss and detriment of all nondelinquent stockholders of your orator, as all such litigation must necessarily tend to diminish the funds of your orator, to the loss and detriment of those rightfully and beneficially entitled thereto and therein.

Fifteenth.—That this is a suit in equity of a civil nature; that the matter in dispute, exclusive of interest and costs, exceeds the sum or value of two thousand dollars, to wit, the sum of $3,019.39 as hereinbefore alleged; and that this cause is a suit arising under the constitution and laws of the United States, to wit, under the

provisions of section 1 of article XIV of the Amendments of the Constitution of the United States, and under the provisions of the act of the Congress of the United States known as the National Bank Act, and particularly under the provisions of sections 5219 and 1977 of the Revised Statutes of the United States.

Sixteenth.—Your orator further shows that only in and under the process of this Honorable Court as a Court of Equity can it have relief or protection from the great multiplicity of suits at law or in equity to which it may be subjected by seizure and sale of any of its property in payment or satisfaction of the tax threatened to be collected by the threatened assessment which said respondent threatens to make as hereinbefore alleged, collection and payment of which said respondent gives out and threatens to make as hereinbefore stated.

In consideration whereof, and forasmuch as your orator is remediless in the premises under the strict rules of the common law and can have adequate relief only in a Court of Equity where matters of this sort are properly cognizable and relievable, your orator prays that an injunction may issue out of this Court restraining and enjoining the said respondent and his successors from making the said threatened assessment and taxation upon the shares of the capital stock of your orator, and from listing in the assessment-book prepared or to be prepared by the respondent for the fiscal year ending June 30th, 1901, or from listing in any other manner or at all, in the said assessment-book, the, or any of the, shares of the capital stock of your orator, and from making the said threatened seizure and sale of the property of your

orator, or from in any manner interfering with the said shares of the capital stock or with the property of your orator, or from instituting any suit or suits, action or actions, against your orator for the collection of any taxes claimed to be due upon any of the shares of the capital stock of your orator; and your orator prays that in the meantime, and until the hearing hereof, a preliminary restraining order and injunction pendente lite, embracing all of the relief herein prayed for, issue out of this Honorable Court, directed to the said respondent, such preliminary restraining order and injunction to continue in force until the determination of the final hearing herein, and that upon the final hearing of this cause this Court do adjudge and declare said threatened assessment, and all action thereunder, and the said statute under which said respondent threatens to make said assessment, illegal and void, and forever enjoin said respondent from making said threatened assessment, and that your orator may have all the injunctions herein prayed for made perpetual; and that your orator may have such other and further relief as this cause may require, as well as its costs.

May it please your Honors to grant unto your orator a writ or writs of subpoena to be issued out of and under the seal of this Honorable Court and directed to the said respondent, Washington Dodge, as Assessor of the said City and County of San Francisco, commanding the said respondent to appear in this cause at some day certain to be named therein and to answer in the premises, but not under oath, answer under oath being expressly

waived, and to abide by and perform such decree as may be rendered herein.

THE SAN FRANCISCO NATIONAL BANK,

[Seal] By JAMES K. WILSON,

President.

E. S. PILLSBURY,

Solicitor for Complainant.

ALFRED SUTRO,

Of Counsel.

Northern District of California,
State of California, } ss.
City and County of San Francisco.

J. K. Wilson, being first duly sworn, says: That he is and always has been the president of The San Francisco National Bank, the complainant above named; that he has read the foregoing bill of complaint and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters which are therein stated to be upon information or belief, and as to those matters that he believes it to be true; and further that the seal affixed to said bill is the corporate seal of the complainant and was affixed to said bill by him, and the name of said complainant was signed by him to said bill, by authority of said complainant.

JAMES K. WILSON.

Subscribed and sworn to, before me, this 25th day of April, A. D. 1900.

[Seal] GEORGE F. HATTON,

Notary Public in and for the City and County of San Francisco, State of California.

[Endorsed]: Bill in Equity to Enjoin Assessment etc. Filed April 25th, 1900. Southard Hoffman, Clerk.

Subpoena Ad Respondendum.

UNITED STATES OF AMERICA.

Circuit Court of the United States, Ninth Judicial Circuit, Northern District of California.

IN EQUITY.

The President of the United States of America, Greeting, to Washington Dodge, as Assessor of the City and County of San Francisco, State of California.

You are hereby commanded that you be and appear in said Circuit Court of the United States aforesaid, at the courtroom in San Francisco on the fourth day of June A. D., 1900, to answer a bill of complaint exhibited against you in said court by The San Francisco National Bank, a national banking association organized and existing under and by virtue of the laws of the United States, and to do and receive what the said Court shall have considered in that behalf. And this you are not to omit under the penalty of five thousand dollars.

Witness, the Honorable MELVILLE W. FULLER, Chief Justice of the United States, this 25th day of April in the year of our Lord one thousand nine hundred, and of our independence the 124th.

[Seal] SOUTHARD HOFFMAN,
Clerk.

Memorandum Pursuant to Rule 12, Rules of Practice for the Courts of Equity of the United States.

You are hereby required to enter your appearance in the above suit, on or before the first Monday of June next at the clerk's office of said court, pursuant to said bill; otherwise the said bill wil be taken pro confesso.

SOUTHARD HOFFMAN,
Clerk.

[Endorsed]: United States Marshal's Office,
Northern District of California.

I hereby certify that I received the within writ on the 25th day of April, 1900, and personally served the same on the 25th day of April, 1900, on Washington Dodge, as Assessor of the City and County of San Francisco, State of California, by delivering to and leaving with Washington Dodge, as Assessor of the City and County of San Francisco, State of California, said defendant named therein at the City and County of San Francisco, in said District, an attested copy thereof, together with a copy of the bill of complaint certified to by plaintiff's attorney.

San Francisco, April 25th, 1900.

JOHN H. SHINE,
United States Marshal.
By S. P. Monckton,
Office Deputy.

Filed April 26. 1900. Southard Hoffman, Clerk.

In the Circuit Court of the United States, Ninth Circuit, Northern District of California.

THE SAN FRANCISCO NATIONAL BANK (a National Banking Association),

Complainant,

vs.

WASHINGTON DODGE, as Assessor of the City and County of San Francisco, State of California,

Respondent.

Answer to Bill of Complaint.

The answer of Washington Dodge, as Assessor of the City and County of San Francisco, State of California, respondent in the bill of complaint entitled "The San Francisco National Bank, Complainant, against Washington Dodge, as Assessor of the City and County of San Francisco, Respondent."

This respondent, now and at all times hereafter saving to himself all and all manner of benefit of exception or otherwise, that can or may be had or taken to the many errors, uncertainties and imperfections in the said bill of complaint contained, for answer thereto, or to so much thereof as this respondent is advised it is material or necessary for him to make answer to, answering, says:

I.

And admits the facts alleged in paragraph "First" of complainant's bill of complaint.

II.

And admits the facts alleged in paragraph "Second" of complainant's bill of complaint.

III.

And admits the facts alleged in paragraph "Third" of complainant's bill of complaint.

IV.

And admits and alleges that under and by virtue of Constitution of the State of California, all property, real, personal, or mixed, not exempt from taxation under the laws of the United States, or under the laws of the State of California, belonging to, owned by, claimed by, in the possession or under the control of any person, at twelve o'clock M. on the first Monday in March in each year, is subject to assessment and taxation, as by the laws of the State of California provided, for the fiscal year ending on the 30th day of June of the next succeeding year.

V.

And respondent admits the facts alleged in paragraph "Fifth" of complainant's bill of complaint.

VI.

And respondent admits the facts alleged in paragraph "Sixth" of complainant's bill of complaint.

VII.

And respondent admits the facts alleged in paragraph "Seventh" of complainant's bill of complaint.

VIII.

And respondent admits that on the first Monday in March, 1900, at 12 o'clock M. of said day, complainant did not own, thence hitherto has not owned, and does not now own, any real estate, either in the City and County of San Francisco, State of California, or elsewhere.

And respondent admits that on the first Monday in March, 1900, at 12 o'clock M. of said day, complainant owned and held the following personal property: $50,000 of bonds of the United States; the premium on said day and at said time having been the sum of $4,800; furniture of the value of $5,450; redemption fund of $2,250; $175,748 in cash; solvent credits over and above the debts due and owing by complainant amounting to the sum of $343,663.32; but respondent denies that all of said hereinbefore enumerated property, or any thereof, is exempt from assessment or taxation under the laws of the United States, or of the State of California; and respondent alleges that he has no information or belief upon the subject sufficient to enable him to answer, and, basing his denial on that ground, denies that said property was, or is, all of the assets or property owned or held by complainant at 12 o'clock M. of the 5th day in March, 1900.

IX.

But respondent denies that he has notified or informed complainant, although he admits he has notified and informed the respective shareholders of complainant, that he is about to assess, and unless restrained by this Honorable Court, he will, under and by virtue of the aforesaid act of the legislature of March 14th, 1899, amending certain section of the Political Code of the State of California as hereinbefore set forth, assess the shares of the capital stock of complainant at a valuation of $104.36 per share for each and every share of the capital stock of complainant; but complainant denies that in case the tax or any of such stock is unsecured by real estate or otherwise, owned by the respective holders of such stock, then or in that event, or otherwise, respondent threatens to collect, as provided in or by said section 3610 of the said Political Code, the amount of such or any tax from complainant, at the hereinbefore rate of taxation of $1.63 on each one hundred dollars of the valuation of said stock at $104.36 per share. And respondent admits that the amount of such tax at the said rate of $1.63 upon each one hundred dollars' valuation of said stock at $104.36 per share, will be the sum of $1.701068 upon each share of said capital stock. But respondent alleges that he has no information or belief upon the subject sufficient to enable him to answer, and basing his denial on that ground, denies that on the 5th day of March, 1900, at twelve o'clock M. of said day, the taxes upon 1775 shares, or any number of shares, or any share or shares, of said capital stock were, ever since have been, or now are, unsecured by real estate owned

by the holders of such stock; but respondent admits that the taxes for the fiscal year ending June 30, 1901, at the rate of $1.63 upon each one hundred dollars' valuation of $104.36 for each said 1775 shares of stock, will be the sum of $3,019.39. Respondent denies that he has notified or informed or threatened, or notified and informed and threatened complainant that said sum of $3,019.39, or any other sum, or any part thereof, will be collectible from complainant, or that, unless restrained by the order of this Honorable Court, or otherwise, he will enforce payment or collection of said sum of $3,019.39, or any other sum, or any part thereof, from complainant.

X.

And respondent admits that, unless restrained by the order of this Honorable Court, he will proceed with the assessment of the capital stock of complainant to the person or persons who owned, claimed, possessed or controlled the shares thereof at 12 o'clock M. on the first Monday in March, 1900; and that in making such assessment of such stock to such person or persons, as aforesaid, he will proceed in the manner alleged in paragraph "Tenth" of complainant's bill of complaint.

XI.

(a) And respondent denies that the assessment and taxation of the capital stock of complainant, when made in the manner aforesaid, will be in violation of, or repugnant to, or in violation of, and repugnant to, the provisions of sections 5,219 or 1,977 of the Revised Statutes of the United States or of either of them, in that such assessment or taxation would be at a greater rate than

is or will be assessed upon other moneyed capital in the hands of individual citizens of the State of California, or for any other reason or at all.

(b) Respondent denies that under and by virtue of the laws of the State of California, or otherwise, or at all, all or any shares of stock in corporations organized under the laws of the said State, and amounting to more than the sum of $200,000,000, or any other sum, are expressly or otherwise exempt from taxation, or that the same are not subject thereto; and denies that especially corporations organized under the laws of said State for the purpose of banking, or all shares thereof or amounting to more than the sum of $35,000,000, or any other sum, are expressly or otherwise exempt from taxation, or that the same are not subject thereto; and denies that the respondent has not assessed for the fiscal year ending June 30, 1901, or that he does not intend to assess to the holders of shares in corporations organized under the laws of the State of California, the value of the same, or to collect from such stockholders any taxes on said shares or the value thereof.

And in this behalf respondent charges the facts to be that all the property, real, personal and mixed, belonging to, owned, claimed, possessed or controlled by any and all corporations or banking associations or corporations at 12 o'clock M. on the first Monday in March, of each year, except such property as is, by the laws of the State of California or of the United States, exempt from assessment and taxation, is required, under and pursuant to the constitution and laws of the State of California to

be assessed and taxed at its full value; that between the first Mondays in March and July, 1900, all property, real, personal, and mixed, belonging to, owned, claimed, possessed or controlled by any corporation organized or existing under or by virtue of the laws of the State of California, at 12 o'clock M. on the first Monday in March, 1900, and not exempt from assessment and taxation by the laws of the State of California, or of the United States, will be assessed at its full value; that the constitution and laws of the State of California do not authorize or require the assessment or taxation eo nomine of the shares of the capital stock of corporations organized and existing under and by virtue of such laws, when the property of such corporations is situated, assessed and taxed in said State at its full value; but that the said constitution and laws of said State do authorize and require the assessment and taxation of the shares of the capital stock of all corporations organized as aforesaid, the property of which is not situated, assessed or taxed in the State of California.

That respondent is informed and believes, and upon such information and belief alleges, that under the constitution and law of the State of California, as the same have been and are construed, interpreted and declared by the Courts of said State, a share of the capital stock of corporations organized and existing under and by virtue of the laws of the State is of no intrinsic value whatsoever, over and above the corporate property which it stands for and represents, that the assessment and taxation of the entire corporate property is the assessment and taxation of the shares of the capital stock of such

corporation, and that the assessment and taxation of both the corporate property and the shares of the capital stock of such corporation would be double or duplicate taxation; which double or duplicate taxation is inhibited by the constitution and laws of the State of California.

(c) And respondent denies that such assessment and taxation upon the shares of the capital stock of complainant would, or will be, in violation of, or repugnant to, or in violation of, and repugnant to, the provisions of section 5,219, of the Revised Statutes of the United States or any statute, in that such taxation would, or will be at a greater rate than would or will, be assessed upon other moneyed capital in the hands of individual citizens in the State of California. And respondent denies that in assessing and taxing the shares of the capital stock of complainant, no deduction would or will, or can legally be made from the valuation of shares, or any of them, of debts unsecured by deed of trust, mortgage, or other lien, on real or personal property due or owing by the stockholders of complainant, or by any of them, to bona fide residents of the State of California; and in this behalf respondent alleges that unless restrained from making an assessment of the share of the capital stock of complainant, by order of this Honorable Court, he will, in making such assessment, permit to be made and make a deduction from the valuation of such shares, and of each and all of them, of debts unsecured by deed of trust, mortgage or other lien on real or personal property, due or owing by the holders of such shares to bona fide residents of the State

of California; and in this behalf respondent alleges that unless restrained from making an assessment of the share of the capital stock of complainant, by order of this Honorable Court, he will, in making such assessment permit to be made and make a deduction from the valuation of such shares, and of each and all of them, of debts unsecured by deed of trust, mortgage or other lien on real or personal property, due or owing by the holders of such shares to bona fide residents of the State of California; alleges that heretofore, to wit; on or about the 23d day of March, 1900, respondent caused to be addressed and mailed to the stockholders of complainant, and to each of them who owned, claimed, possessed or controlled any shares of the capital stock of complainant at 12 o'clock M. of the first Monday in March, 1900, a written notice, notifying such stockholders, and each and all of them, of the intention of respondent to assess such stock to such stockholders, and requesting them to call at the office of respondent in the City Hall, in the City and County of San Francisco, State of California, and present such unsecured debts, due or owing to bona fide residents of the State of California or other exemptions as they might have, and which, under the laws of the United States and of the State of California, are deductible from the valuation of such shares of stock, that he might permit and make such deductions; alleges that in response to such notice and invitation, numerous stockholders of complainant's capital stock have made return, as required and permitted by section 3,629, of the Political Code, of unsecured debts owned by them on the 5th day of March, 1900, at 12 o'clock M., due and

owing to bona fide residents of the State of California; and have requested that such unsecured debts be deducted from that valuation of the shares of stock of complainant, which said deductions respondent is prepared to, and will, unless restrained by order of this Honorable Court, make and allow from the valuation of said shares of stock.

And respondent alleges he has no information or belief upon the subject sufficient to enable him to answer, and basing his denial on that ground, denies that the amount of moneyed capital in the City and County of San Francisco, State of California, on the first Monday in March, 1900, at noon of said day, invested by banks or bankers having their principal place of business in said City and County, or residents therein in unsecured solvents' credits, or from which, under the constitution and laws of this State unsecured debts can be deducted, was or is in the sum of $14,074,561 or any other sum, or any part thereof; denies that on the day and year last aforesaid the amount of moneyed capital in the State of California, other than in the City and County of San Francisco, invested by banks or bankers in unsecured solvent credits, of from which, under the constitution and laws of the State of California unsecured debts can be deducted, or otherwise, was the sum of $7,589,302 or any other sum, or any part thereof; denies that on the day and year last aforesaid said banks or bankers, at the City and County of San Francisco, had debts unsecured by trust deed, mortgage, or other lien on real or personal property, owing by such bank or bankers in said City and County, of San Francisco amounting to

the sum of $36,710,062, or any other amount, or any part thereof; denies that on said day last aforesaid the amount of debts unsecured by trust deed, mortgage, or other lien on real or personal property, owing by said bank or bankers, or otherwise, in the State of California, other than in the City and County of San Francisco, was the sum of $32,400,304, or any other sum, or any part thereof. And respondent denies that the amount of moneyed capital invested in such solvent credits by such bank or bankers on the day and year last aforesaid in the City and County of San Francisco or in the State of California, as compared with the amount of moneyed capital invested in the shares of the capital stock of complainant, or otherwise or at all, is so large and substantial, or large and substantial, that the assessment or taxation of the shares of the capital stock of complainant without deduction therefrom, or without being able to deduct therefrom, debts unsecured by trust deed mortgage or other lien on real or personal property, as may have been owing by the respective holders of the shares of the capital stock of complainant on the day and year last aforesaid, would or will be an illegal or unjust or illegal and unjust or any discrimination, or a discrimination at all against the owners or holders of the shares of the capital stock of complainant, or would or will make the taxation of said shares of stock, or any of them, at a greater rate or at any rate other than is imposed upon other moneyed capital in the hands of individual citizens in the State of California, or particularly in the City and County of San Francisco, State of California, And respondent denies that the solvent credits

hereinbefore referred to or any solvent credits so held as aforesaid by the banks or bankers in the City and County of San Francisco or in the State of California, are moneyed capital in the hands of individual citizens of the State of California which enter into competition for business, or otherwise, with complainant.

And in this behalf, respondent is informed and believes and upon such information and belief alleges the fact to be that the paid-up capital of commercial banks and trust companies engaged in the business of banking in the City and County of San Francisco, State of California, was, on the first Monday in March, 1900, at noon of said day, ever since has been, and now is, the sum of $9,899,615 and no more and that, the reserve fund, undivided profits and surplus fund of said commercial banks and trust companies on the day and year last aforesaid, aggregated the sum of $10,444,447, and no more, making a total of $20,344,062; that the market value of the shares of the capital stock of said commercial banks and trust companies, as bought and sold on the stock and bond exchange and in the open market on the day and year last aforesaid, was the sum of $23,325,246, and no more; that the said commercial banks and trust companies own and have invested in United States' bonds and other property exempt from taxation under the laws of the United States, and of the State of California the aggregate sum of $15,109,422, and no more; that said banks and trust companies are or will be assessed for real and personal property, including solvent credits, owned, claimed, possessed or controlled by them on the first Monday in March, 1900, at 12 o'clock M. of said day, in the sum of $14,794,628 or more.

And in this behalf, respondent further alleges that the commercial banks and trust companies, and such and all of them entering into competition for business with complainant in the City and County of San Francisco, and in the State of California were or will be assessed and taxed for the fiscal year ending June 30, 1901 at as great or greater a rate than is or will be imposed or assessed upon the shares of the capital stock of complainant.

XII.

And respondent denies that, in the making of the assessment of the shares of the capital stock of complainant, he will not proceed in the manner directed by the act of March 14, 1899, in this: That he will ascertain and determine the value of each of the shares of the capital stock of complainant to be the sum of $115,452, by dividing the sum total of the assets of complainant, consisting of $500,000 paid up capital, and $77,260 undivided profits, by 5,000, the number of shares of capital stock of complainant, and will deduct therefrom the sum of $11.10 per share, as the proportionate amount per share of the value of the United States bonds held by complainant to secure its circulation, and of its furniture, and will, as hereinbefore set out, assess to the stockholders the sum of $104.36 per share as the value of each share of complainant's capital stock subject to assessment and taxation under the provisions of the act of March 14, 1899; or that he will not proceed in the manner directed by said act, otherwise, or at all; but respondent admits that he will refuse to

make any other or further deductions from such ascertained values, in order to ascertain the assessable value of such shares; and respondent denies that the provisions of section 3609 of the Political Code of the State of California, he was or is required to deduct from the value of each share of the capital stock of complainant such sum as is in the same proportion to such value as the value of any other property owned, possessed, claimed or controlled by complainant at 12 o'clock M. on the 5th day of March, 1900; and denies that he is required by said section 3609, or any other section, or any law whatsoever, to make any further or other deduction from the value of said shares of the capital stock of complainant, proportional or otherwise, for or on account of any other or further property owned, claimed, possessed or controlled by complainant, as aforesaid; but respondent admits that, on the first Monday in March, 1900, at 12 o'clock M. of said day, complainant had not, and thence hitherto has not, nor has it now, any real estate; and that all the property of complainant consisted on said day and at said time, and has thence hitherto consisted, and does now consist, of its bonds, money on hand, credits, furniture, and other personal property, and at said time the same constituted and were the assets of complainant used and employed by it in the conduct and carrying on of its business as a national banking association under and by virtue of the provisions of the act of Congress of the United States known as the National Banking Act; but respondent denies that said personal property, or any thereof, was on said day or

at said time, or on any day, or at any time, exempt from assessment or taxation; and in this behalf respondent alleges the fact to be that said personal property assets, and said and all thereof, were, on said day and at said time, and ever since have been, and are now, constituent elements in the estimation of the value of the shares of the capital stock of complainant, on account of which the shareholders of complainant are entitled to no deduction, or deductions whatsoever. And respondent denies that, if deduction of all the property of complainant exempt from assessment or taxation were made to each shareholder in assessing said stock, there would remain nothing of value subject to assessment or taxation, or that assessment or taxation of said shares at said value of $104.36 per share, would be based wholly, or at all, upon supposed and fictitious, or supposed or fictitious property, or upon property exempt by the constitution or laws of the United States from assessment or taxation; and in this behalf respondent alleges that a full and entire deduction from the value of the shares of complainant will be permitted and made of the proportionate value per share of all property not included or permitted or required to be included by law in the estimation and determination of the value of said shares, and each of them, for purposes of assessment and taxation.

XIII.

And respondent admits that in and by section 5610 of said Political Code it is provided, that in case the tax on any stock in a national bank is unsecured by

real estate owned by the holder of such stock, then the bank in which said stock is held shall be liable therefore, and the assessor shall collect the same from said bank, which may charge the amount of the tax so collected to the account of the stockholders owning such stock; and shall have a lien prior to all other liens on said stock and the dividends and earnings thereof, for the reimbursement to it of the taxes so paid. Admits that the ownership of the shares of the capital stock of complainant, or of any of them, may and does change by the endorsement and transfer of the certificate representing a given number of said shares without there being any change in the name or names in which the said certificate or certificates stand on the books of complainant.

Admits that while the shares of stock of complainant on the first Monday in March, 1900, M. of said day, may have been owned as the same appear upon the books of complainant, or as the names of the owners thereof appear in the list of stockholders kept by complainant, yet intermediate that day and the day when respondent may call upon or demand payment of complainant of the taxes to be levied, should respondent ever call upon or demand payment of such taxes from complainant, the ownership of said shares of stock may have been changed; but respondent denies that, while complainant may have known who the owners of said shares of stock were on the first Monday in March, 1900, M. of that day, at the time a demand upon complainant for payment of such tax may be made, complainant may or will be wholly or otherwise unable to discover

who are the owners of the same, or to whose account the amount of such tax so paid will or can be charged, and in this behalf respondent is informed and believes, and upon such information and belief charges the fact to be, that the shares of the capital stock of complainant standing on the books of complainant in the names of certain persons as aforesaid, at 12 o'clock M. on the first Monday in March, 1900, were actually owned, claimed, belonging to, in the possession or under the control of such person or persons, on said day and at said time, and that the same ever since said day and hour have been, and now are, owned, claimed, belonging to, in the possession of, or under the control of, the same person or persons in whose name or names the said shares appeared upon the books of complainant, as aforesaid.

And respondent denies that, should complainant be compelled to pay a or any tax upon its shareholders, as provided in section 3610 of the Political Code, it would be impossible for complainant to charge the amount of such tax to the accounts of the respective stockholders on any such shares of stock; inasmuch as complainant be wholly or otherwise unable to know who were the real owners of such shares of stock, or of any of them, or who or what shareholders were legally liable for the amount of such tax; and denies that, by reason of any such payment, such tax, or any part thereof, would be irretrievably, or otherwise, or at all, lost to complainant.

And respondent denies that, if complainant should pay the amount of such tax and should attempt to

charge the proportionate amount thereof to the persons in whose names the said shares of stock stood on the first Monday in March, 1900, at noon of said day, or at any other time, on the books of complainant, according to the number of shares standing in the name of each person, complainant would be subjected to, or would be harassed by,a great or any multiplicity of suits, or by any suits whatsoever, by or on behalf or at the instance of several, or any, stockholders of complainant. And respondent denies that any one or more of said stockholders would have the right of resisting or contesting the payment of any tax on any share or shares of the capital stock of complainant owned by such stockholders, or would have the right to show that at 12 o'clock M. of the first Monday in March, 1900, he was not legally liable therefor, or that complainant had made payment of said tax in its own wrong, or otherwise, in case it should pay the same; denies that in case it should result that complainant had made illegal payment of said tax, such illegal payment would constitute a breach of trust, or illegal division of the corporate assets of complainant from the trust upon which it holds the same for the benefit of its creditors or stockholders.

XIV.

And respondent denies that he has threatened the seizure or sale, or does now threaten the seizure or sale of any personal or other property belonging to complainant sufficient to raise the sum of $3,019.39, or any other sum, or any part thereof; and denies if

such seizure or sale should be made, such seizure or sale would deprive complainant of its property without due process of law; and respondent denies that such a seizure and sale would be contrary to, or in violation, or repugnant to, the rights or privileges of complainant under or pursuant to the provisions of the constitution or laws of the United States, or under or pursuant to the provisions of the constitution or the laws of the State of California, or particularly under or pursuant to the provisions of section 1 article XIV of the Constitution of the United States, known as the National Bank Act, or under or pursuant to the provisions of section 1 of article XIII of the constitution of the State of California; or under or pursuant to the provisions of section 3608 of the Political Code of the State of California, as the same existed at 12 o'clock M. on the first Monday in March, 1900, or that the act of the legislature of the State of California of March 14, 1899, under or pursuant to which the respondent might act in making said assessment and taxation, or making such seizure or sale, is in violation of or repugnant to the rights or privileges of complainant under or pursuant to the provisions of the constitution or law of the United States, or particularly under or pursuant to the provisions of section 1, article XIV, of the Constitution of the United States, or under or pursuant to the provisions of the act of Congress of the United States known as the National Bank Act, or any or all of such laws, constitutions, or provisions, or otherwise, or at all.

And respondent denies that, under the provisions of

said act of March 14, 1899, complainant would be protected only in paying the taxes of the stockholder or stockholders who owned stock of complainant at 12 o'clock M. on said first Monday in March, 1900, and who did not own real estate to secure the payment of the same, or would not be protected in paying said tax, or any part thereof, where, at the time of such payment by complainant, such shares had theretofore actually changed in ownership and had become the property of any person or persons other than or different from those persons owning it at 12 o'clock M. of said first Monday in March, 1900, or had become the property of any person or persons who at the time of such payment by complainant might own real estate to secure the payment of the tax on such shares of stock. And respondent denies that, by reason of all or any of such supposed or pretended facts complainant would be involved in great or any doubt or uncertainty as to its rights or duties in the premises, or otherwise, or would be exposed to a great or any multiplicity of litigation, or any litigation, to the loss or detriment, or otherwise, of all or any nondelinquent stockholders of complainant.

XV.

And respondent denies that this is a suit in equity of a civil nature, and in this behalf respondent alleges that the subject matter of said bill of complaint is not within the jurisdiction of a court of equity, or cognizable therein.

XVI.

And respondent further submits to this Honorable Court that complainant has a full, complete, speedy

and adequate remedy at law against respondent for all causes of action or causes of actions, stated or attempted to be stated in complainant's bill of complaint on file in this action; and he here claims the same benefit of the objection as if he had not demurred to the relief so sought.

Wherefore, this respondent having fully answered, confessed, traversed, and avoided or denied all the matters in the said bill of complaint material to be answered according to his best knowledge and belief, humbly prays this Honorable Court to enter its decree, that the respondent be hence dismissed, with his reasonable costs and charges in this behalf most wrongfully sustained, and for such further and other relief in the premises as to this Honorable Court may seem meet and in accordance with equity.

WASHINGTON DODGE,
As Assessor of the City and County of San Francisco.
Respondent.

FRANKLIN K. LANE,
Solicitor for Respondent.

State of California,
City and County of San Francisco. } ss.

Washington Dodge, as Assessor of the City and County of San Francisco, State of California, respondent in the above-entitled proceeding, being first duly sworn, says: That he is the respondent in the above-entitled action; that he has read the foregoing answer in said action, and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters which are therein stated on his information or belief, and as to those matters that he believes it to be true.

WASHINGTON DODGE.

Subscribed and sworn to before me, this 2d day of June, 1900.

J. M. SEAWELL,
Judge of the Superior Court of the City and County of San Francisco, State of California.

[Endorsed]: Answer to Bill of Complaint.

Service by copy of within original is hereby admitted this 4th day of June, 1900.

E. S. PILLSBURY,
ALFRED SUTRO,
Solicitors for Complainant.

Filed June 4th, 1900. Southard Hoffman, Clerk.

In the Circuit Court of the United States, Ninth Circuit, Northern District of California.

THE SAN FRANCISCO NATIONAL BANK (a National Banking Association),
Complainant,
vs.
WASHINGTON DODGE, as Assessor of the City and County of San Francisco, State of California,
Respondent.
No. 12,928.

Replication.

The replication of The San Francisco National Bank, a national banking association, complainant, to the answer of Washington Dodge, as Assessor of the City and County of San Francisco, State of California, respondent.

This repliant, saving and reserving unto itself all and all manner of advantage of exception to the manifold insufficiencies of the said answer, for replication thereunto saith that it will aver and prove its said bill to be true, certain and sufficient in the law to be answered unto, and that the said answer of the said respondent is uncertain, untrue and insufficient to be replied unto

by this repliant; without this, that any other matter or thing whatsoever in the said answer contained, material or effectual in the law to be replied unto, confessed and avoided, traversed or denied, is true. All of which matters and things this repliant is and will be ready to aver and prove as this Honorable Court shall direct; and humbly prays as in and by its said bill it hath already prayed.

E. S. PILLSBURY,
Solicitor for Complainant.

ALFRED SUTRO,
Of Counsel.

[Endorsed]: Replication.

Service of within replication admitted this 11th day of June, 1900.

FRANKLIN K. LANE,
City Attorney,
Solicitor for Respondent.

Filed June 11, 1900. Southard Hoffman, Clerk. By W. B. Beaizley, Deputy Clerk.

In the Circuit Court of the United States, Ninth Circuit, Northern District of California.

THE SAN FRANCISCO NATIONAL BANK (a National Banking Association),

Complainant,

vs.

WASHINGTON DODGE, as Assessor of the City and County of San Francisco,

Respondent.

Supplemental Bill of Complaint.

To the Honorable the Judges of the Circuit Court of the United States for the Northern Circuit of California, in the Ninth Circuit, Sitting in Equity:

The San Francisco National Bank, a national banking association, organized and existing under and by virtue of the laws of the United States, brings and files its supplemental bill of complaint against Washington Dodge, as Assessor of the City and County of San Francisco, State of California, and thereupon humbly complaining, your orator shows your Honors as follows:

That your orator filed its original bill of complaint against the respondent in this court on the 25th day of April, 1900, wherein it prayed that the respondent be enjoined and restrained from making any assessment or

taxation upon the or any of the shares of the capital stock of your orator, and from listing the said assessment, or any share or shares of the capital stock of your orator in the assessment-book prepared or to be prepared by the respondent for the fiscal year ending June 30th, 1901, and from making any seizure or sale of any property of your orator, or from in any manner interfering with the shares of the capital stock, or with the property of your orator, or from instituting any suit or suits, action or actions, against your orator for the collection of any taxes claimed to be due on any assessment upon any share or shares of the capital stock of your orator.

That, upon the filing of the said bill of complaint, a preliminary restraining order was granted by the Honorable, the above-entitled Court, restraining the said respondent from making the said threatened assessment and from collecting any tax or taxes on any share or shares of the capital stock of your orator; that thereupon the respondent filed his answer to the said bill of complaint, and that thereupon the complainant replied thereto; that thereupon the matter of the said restraining order was submitted to the Honorable, the above-entitled Court for its consideration and decision, and that, after having considered the same, the said Court dissolved the said restraining order to the extent of permitting the said respondent to make an assessment of the shares of the capital stock of your orator.

That thereafter, to wit, on or about the 29th day of June, 1900, the said respondent made an assessment of each share of the capital stock of your orator at a val-

uation of $104.36 per share, as in the original bill herein averred, and did, on or about the said 29th day of June, 1900, notify and inform your orator, and did threaten your orator that he, the said respondent, would, on Monday, the 2d day of July, 1900, demand from your orator the sum of two thousand and seventy-one and 58-100 dollars ($2,071.58) as and for the tax on 1217 shares of the capital stock of your orator, the said tax on the said 1217 shares of the capital stock of your orator being unsecured by real estate owned by the holders of said 1217 shares of stock, and that if said sum of $2,071.58 should not be paid on demand on said 2d day of July, 1900, by your orator, the said respondent would collect said sum from your orator by seizure and sale of personal property of your orator sufficient to raise said sum of $2,071.58.

That the assessment so made by respondent and the said taxes are the same as charged in the original bill herein as threatened to be made and levied; and the said assessment and the said taxes are subject to the same objections and the like charges of illegality as in said original bill alleged in regard to the assessment and taxes therein stated as threatened to be made and levied; and your orator hereby avers that all and singular the averments in said original bill contained in respect to said threatened assessment and taxes are hereby made in respect to the said assessment so made, and said taxes so threatened to be collected, as if herein fully incorporated and set forth.

That your orator does not intend to and will not pay the said sum of $2,071.58, or any part thereof, and that

the said respondent, unless restrained by the order of this Honorable Court, will make the said seizure and sale of the property of your orator, sufficient to raise the said sum of $2,071.58, to the great and irreparable loss of your orator, as is more fully set forth in the original bill of complaint herein.

In consideration whereof, and forasmuch as your orator is remediless in the premises under the strict rules of the common law, and can have relief only in a court of equity, where matters of this sort are properly cognizable and relievable your orator prays that an injunction may issue out of this Court restraining and enjoining the said respondent from making any collection of any tax on any share of the capital stock of The San Francisco National Bank the complainant herein for the fiscal year ending June 30th, 1901, and from making the collection of the said sum of two thousand and seventy-one and 58-100 dollars ($2,071.58), or any part thereof, as and for the tax claimed to be due on twelve hundred and seventeen (1217) shares of the capital stock of The San Francisco National Bank, the complainant herein, for the fiscal year ending June 30th, 1901, as alleged herein, and from seizing or selling any property of said complainant in satisfaction of any tax upon any share of the capital stock of The San Francisco National Bank, based upon any assessment of the shares of the capital stock of The San Francisco National Bank made by the respondent for the fiscal year ending June 30th, 1901, and from instituting any suit or suits, action or actions, against said complainant for the collection of any such tax, or for the collection of said sum of $2,071.58, or any

part thereof, and from in any manner interfering with, or molesting, said complainant, or disturbing it in the possession of its property, by reason of or looking to obtainment of payment or satisfaction of any tax on any share of its capital stock, or of said sum of $2,071.58, or any part thereof; and your orator prays that in the meantime, and until the hearing hereof, a preliminary restraining order and injunction pendente lite, embracing all of the relief herein prayed for, issue out of this Honorable Court, directed to the said respondent, such preliminary restraining order and injunction to continue in force until the determination of the final hearing herein, and that upon the final hearing of this cause, this Court do adjudge and declare said assessment and the said taxes illegal and void, and forever enjoin said respondent from collecting said sum of $2,071.58, or any part thereof, or any other sum as and for taxes upon any share or shares of the capital stock of your orator; and that your orator may have the injunction herein prayed for made perpetual, and that your orator may have such other and further relief as this cause may require, as well as its costs.

May it please your Honors to grant unto your orator a writ or writs of subpoena, to be issued out of and under the seal of this Honorable Court, and directed to said respondent, Washington Dodge, as Assessor of said City and County of San Francisco, commanding said respondent to appear in this cause at some day certain to be named therein, and to answer in the premises, but not under oath, answer under oath being expressly waived,

and to abide by and perform such decree as may be rendered herein.

THE SAN FRANCISCO NATIONAL BANK,
[Seal.] By JAMES K. WILSON, President,
Complainant.

E. S. PILLSBURY,
Solicitor for Complainant.
ALFRED SUTRO,
Of Counsel.

Northern District of California,
State of California, } ss.
City and County of San Francisco.

J. K. Wilson, being first duly sworn, says: That he is, and always has been, the president of The San Francisco National Bank, the complainant above named; that he has read the foregoing supplemental bill of complaint and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters which are therein stated to be upon information or belief, and as to those matters that he believes it to be true; and, further, that the seal affixed to said bill is the corporate seal of the complainant and was affixed to said bill by him, and the name of said complainant was signed by him to said bill, by authority of said complainant.

JAMES K. WILSON.

Subscribed and sworn to before me this 2d day of July, A. D. 1900.

[Seal] E. H. THARP,

Notary Public in and for the City and County of San Francisco, State of California.

[Endorsed]: Supplemental Bill. Filed July 2, 1900. Southard Hoffman, Clerk.

Subpoena Ad Respondendum on Supplemental Bill of Complaint.

UNITED STATES OF AMERICA.

Circuit Court of the United States, Ninth Judicial Circuit, Northern District of California.

IN EQUITY.

The President of the United States of America, Greeting, to Washington Dodge, as Assessor of the City and County of San Francisco:

You are hereby commanded, that you be and appear in said Circuit Court of the United States aforesaid, at the courtroom in San Francisco on the sixth day of August, A. D. 1900, to answer a supplemental bill of complaint exhibited against you in said court by The San Francisco National Bank, a national banking association, organized and existing under and by virtue of the laws of the United States, and to do and receive what what the said Court shall have considered in that behalf. And this your are not to omit, under the penalty of five thousand dollars.

Witness, the Honorable MELVILLE W. FULLER, Chief Justice of the United States, this 2d day of July, in the year of our Lord one thousand nine hundred, and of our independence the 124th.

SOUTHARD HOFFMAN,
Clerk.

Memorandum Pursuant to Rule 12, Rules of Practice for the Courts of Equity of the United States.

You are hereby required to enter your appearance in the above suit, on or before the first Monday of August next, at the clerk's office of said Court, pursuant to said bill; otherwise the said bill will be taken pro confesso.

SOUTHARD HOFFMAN,
Clerk.

[Endorsed]: United States Marshal's Office, Northern District of California.

I hereby return that I received the within writ on the 3d day of July, 1900, and personally served the same on the 5th day of July, 1900, on Washington Dodge, as Assessor of the City and County of San Francisco, by delivering to and leaving with Washington Dodge, as Assessor of said City and County said defendant named

therein, at the City and County of San Francisco, in said District, an attested copy thereof.

San Francisco, July 5, 1900.

JOHN H. SHINE,
United States Marshal.
By E. A. Morse,
Office Deputy.

Filed July 7, 1900. Southard Hoffman, Clerk. By W. B. Beaizley, Deputy Clerk.

In the Circuit Court of the United States, Ninth Circuit, Northern District of California.

THE SAN FRANCISCO NATIONAL BANK,
Complainant,
vs.
WASHINGTON DODGE, as Assessor etc.,
Respondent.

Answer to Supplemental Bill of Complaint.

The answer of Washington Dodge, as Assessor of the City and County of San Francisco, State of California, respondent in the supplemental bill of complaint entitled "The San Francisco National Bank, Complainant, v. Washington Dodge, as Assessor of the City and County of San Francisco, Respondent."

This respondent now, and at all times thereafter, saving to himself all, and all manner of benefit of exception

or otherwise that can or may be had or taken to the many errors, uncertainties and imperfections in the said supplemental bill of complaint contained, for answer thereto, or to as much thereof as this respondent is advised, it is material or necessary for him to make answer to, answering says:

I.

And admits that complainant filed its original bill of complaint against the respondent in the court on the 25th day of April, 1900, wherein it prayed that the respondent be enjoined and restrained from making any assessment or taxation upon the shares of the capital stock of complainant,, and from listing the said assessment in the assessment-book prepared, or to be prepared, by respondent for the fiscal year ending June 30, 1900, and from making any seizure or sale of any property of complainant, or from in any manner interfering with the shares of the capital stock, or with the property of complainant, or from instituting any suit or suits, action or actions, against complainant for the collection of any taxes due on said assessment upon any of the shares of the capital stock of complainant.

II.

And admits that upon the filing of the said bill of complaint a preliminary restraining order was granted by the Honorable, the above-entitled Court, restraining the respondent from making the said assessment, and from collecting any taxes on any shares of the capital stock of the complainant; and admits and alleges that thereupon the respondent filed his answer to the said

bill of complaint, and that thereupon the complainant replied thereto; and admits that thereupon the matter of the said restraining order was submitted to the Honorable, the above-entitled Court, for its consideration and determination, and that after having considered the same, the Court dissolved the restraining order.

III.

And respondent admits that thereafter, to wit, on or about the 29th day of June, 1900, respondent made an assessment of each share of the capital stock of complainant at a valuation of $104.36 per share, and did, on or about the 29th day of June, 1900, notify and inform complainant that he would, on Monday, the 2d day of July, 1900, demand from complainant the sum of $2,071.58, as and for the tax on 1217 shares of the capital stock of the complainant, the tax on the said 1217 shares of the capital stock of the complainant being unsecured by real estate owned by the holders of the said 1217 shares of stock; and that if said sum of $2,071.58 should not be paid on demand on said 2d day of July, 1900, by complainant, respondent would collect said sum from complainant by seizure and sale of personal property of complainant sufficient to raise said sum of $2,071.58.

IV.

But respondent denies that the assessment so made is subject to the same or any objection, or to the like or any charges of illegality, as in said original bill, or otherwise alleged in regard to the assessment therein stated as threatened to be made; and respondent prays

that all and singular the allegations in said original bill of complaint contained in respect to the illegality or unconstitutionality of said threatened assessment may be taken to be herein repeated and denied with respect to said assessment so actually made by respondent with a like force and effect as if the denials and averments in respondent's answer to said original bill of complainant contained in this behalf were herein repeated in full in respect to said assessment so actually made.

V.

And respondent denies that unless restrained by the order of this Honorable Court, or otherwise, he will make seizure and sale of the property of complainant, to the great or irreparable loss of complainant, as set forth in said original bill of complaint heretofore filed herein, or otherwise or at all.

VI.

And in this behalf the respondent alleges the facts to be that, under and by virtue of the constitution and laws of the State of California, and especially of section 3628 of the Political Code of said State, respondent is commanded and required, between the first Mondays in March and July of each year, in the discharge of his duties as Assessor of the City and County of San Francisco, to ascertain the names of all taxable inhabitants, and all the property in the county subject to taxation, and to assess the same to the persons by whom it was owned or claimed, or in whose possession or control it was on the first Monday of March next preceding; that,

under and in accordance with the provisions of sections 3620 and 3621 of the Political Code of said State, respondent is commanded and required, at the time of the assessment of property as aforesaid, to collect the taxes on all property when, in his opinion, such taxes are not a lien upon real estate sufficient to secure the payment of the same; that such collection may be made by seizure and sale of any personal property owned by the person against whom the tax is assessed at the time of making the assessment, or at any time before the third Monday in July of each year, and not otherwise, or at any other time; that such collections can be made only upon receipts furnished respondent by the Auditor of the City and County of San Francisco, which receipts such Auditor is authorized and required to furnish under and in accordance with section 3738 of the Political Code of said State, and under and by the provisions of said section of said code respondent is required to return all unused receipts to such Auditor on the first Monday in August in each year; that the time during which respondent is authorized and empowered to make such collections, and especially the collection of the personal property taxes assessed against the shares of complainant, has heretofore, to wit, on the third Monday of July, 1900, wholly expired and terminated, and respondent is without any present or future power or authority to collect by seizure and sale or otherwise, or to receive or receipt for any of said taxes so assessed as aforesaid.

VII.

And respondent further admits to this Honorable Court that complainant has a full, complete, speedy,

and adequate remedy at law against respondent for all causes of action, or causes of actions stated, or attempted to be stated in complainant's supplemental bill of complaint on file in this action; and he here claims the same benefits of the objection as if he had not demurred to the relief so sought.

Wherefore, this respondent having fully answered, confessed, traversed, and avoided and denied all the matters in the said supplemental bill of complaint material to be answered, according to his best knowledge and belief humbly prays this Honorable Court to enter its decree, that the respondent be hence dismissed, with his reasonable costs and charges in this behalf in the premises as to this Honorable Court may seem meet and in accordance with equity.

WASHINGTON DODGE,
Assessor of the City and County of San Francisco, Respondent.

FRANKLIN K. LANE,
Solicitor for the City and County of San Francisco, Respondent.

I hereby certify that, in my opinion, the foregoing answer is well founded in point of law.

W. S. BROLECK.

[Endorsed]: Service by copy of the within original is hereby admitted this 26th day of September, A. D. 1900.

E. S. PILLSBURY,
Solicitor for Complainant.

Filed September 26, 1900. Southard Hoffman, Clerk. By W. B. Bealzley, Deputy Clerk.

In the Circuit Court of the United States, Ninth Circuit, Northern District of California.

THE SAN FRANCISCO NATIONAL BANK (a National Banking Association),
Complainant,
vs.
WASHINGTON DODGE, as Assessor of the City and County of San Francisco, State of California,
Respondent.
No. 12,928.

Replication to Supplemental Bill of Complaint.

The replication of The San Francisco National Bank, a national banking association, complainant, to the answer of Washington Dodge, as Assessor of the City and County of San Francisco, State of California, respondent, to the supplemental bill of complaint herein.

This repliant, saving and reserving unto itself all and all manner of advantage of exception to the manifold insufficiencies of the said answer to the said supplemental bill of complaint for replication thereunto, saith that it will aver and prove its said supplemental bill to be true, certain and sufficient in the law to be answered unto, and that the said answer of the said respondent is uncertain, untrue and insufficient to be replied unto by

this repliant; without this, that any other matter or thing whatsoever in the said answer contained material or effectual in the law to be replied unto, confessed and avoided, traversed or denied, is true. All of which matters and things this repliant is and will be ready to aver and prove as this Honorable Court shall direct, and humbly prays as in and by its said supplemental bill it hath already prayed.

E. S. PILLSBURY,
Solicitor for Complainant.

ALFRED SUTRO,
Of Counsel.

[Endorsed]: Service of within replication admitted this 28th day of September, 1900.

FRANKLIN K. LANE,
Solicitor for Respondent.

Filed October 1, 1900. Southard Hoffman, Clerk. By W. B. Beaizley, Deputy Clerk.

At a stated term, to wit, the November term, A. D. 1901, of the Circuit Court of the United States of America, of the Ninth Judicial Circuit, in and for the Northern District of California, held at the courtroom in the City and County of San Francisco, on Monday, the 20th day of January, in the year of our Lord one thousand nine hundred and two. Present: The Honorable WILLIAM W. MORROW, Circuit Judge.

THE SAN FRANCISCO NATIONAL BANK,

vs.

WASHINGTON DODGE, as Assessor, etc.,

No. 12,928.

Order Denying Application for Injunction and Dismissing Bill of Complaint.

Complainant's application for injunction pendente lite herein having been heard and submitted, and the cause having also been heard and submitted upon the pleadings, and an agreed statement of facts filed, and the same having been fully considered, it is now ordered that said application for injunction be and hereby is denied; that the restraining order heretofore issued herein be discharged; that complainant's bill and supplemental bill herein be and hereby are dismissed, and that defendant have a decree against complainant for his costs.

In the Circuit Court of the United States, Ninth Circuit, Northern District of California.

THE SAN FRANCISCO NATIONAL BANK,
Complainant,
vs.
WASHINGTON DODGE, as Assessor, etc.,
Defendant.
No. 12,928.

Enrollment.

The complainant filed its bill of complaint herein on the 25th day of April, 1900, which is hereto annexed.

A subpoena to appear and answer in said cause was thereupon issued, returnable on the 4th day of June, A. D. 1900, which is hereto annexed.

The defendant appeared herein on the 31st day of May, 1900, by Franklin K. Lane, Esq., his solicitor.

On the 4th day of June, 1900, an answer was filed herein, which is hereto annexed.

On the 11th day of June, 1900, a replication to said answer was filed herein, and is hereto annexed.

On the 2d day of July, 1900, by leave of the Court, a supplemental bill was filed herein, and is hereto annexed.

A subpoena to appear and answer said supplemental bill was issued on the 2d day of July, 1900, returnable the 6th day of August, 1900, which is hereto annexed.

An answer to said supplemental bill was filed herein on the 26th day of September, 1900, and is hereto annexed.

A replication to said answer was filed herein on the 1st day of October, 1900, and is hereto annexed.

On the 20th day of January, 1902, an order denying application for injunction and dismissing bill was made and entered herein, a copy of which is hereto annexed.

Thereafter, and on the 26th day of May, 1902, a final decree was signed, filed and entered herein, in the words and figures following, viz:

At a stated term, to wit, the March Term, A. D. 1902, of the Circuit Court of the United States of America, of the Ninth Judicial Circuit, in and for the Northern District of California, held at the courtroom in the City and County of San Francisco, on Monday, the twenty-sixth day of May, in the year of our Lord one thousand nine hundred and two. Present: WILLIAM W. MORROW, Circuit Judge.

THE SAN FRANCISCO NATIONAL BANK (A National Bank Association),
Complainant,
vs.
WASHINGTON DODGE, as Assessor of the City and County of San Francisco, State of California, et al.,
Defendants.
No 12,925

Final Decree.

This cause came on to be heard at the November term, A. D. 1901, and was argued by counsel and submitted to the Court for consideration and decision; whereupon, on consideration thereof, it is ordered, adjudged, and decreed, that complainant's bill of complaint and supplemental bill of complaint herein be, and the same hereby are, dismissed, and that defendants herein recover from complainant their costs herein expended, taxed at $29.90.

Dated San Francisco, Cal. May 26, A. D. 1902.

WM. W. MORROW,
Circuit Judge.

[Endorsed]: Final Decree. Filed and entered May 26th, 1902. Southard Hoffman, Clerk. By W. B. Beaizley, Deputy Clerk.

UNITED STATES OF AMERICA.

Circuit Court of the United States, Ninth Circuit, Northern District of California.

SAN FRANCISCO NATIONAL BANK, Complainant,

vs.

WASHINGTON DODGE, Assessor, etc., Respondent.

Memorandum of Costs and Disbursements.

Clerk's fees	$ 9.90
Docket fee.....	20.00
Total	$29.90

January 25, 1902. No appearance. Costs taxed at $29.90.

SOUTHARD HOFFMAN,
Clerk.

United States of America,
Northern District of California, } ss.
City and County of San Francisco.

W. I. Brobeck, being duly sworn, deposes and says: That he is one of the attorneys for the respondent in the above-entitled cause, and as such is better informed rela-

tive to the above costs and disbursements than the said respondent. That the items in the above memorandum contained are correct, to the best of this deponent's knowledge and belief, and that the said disbursements have been necessarily incurred in the said cause.

W. I. BROBECK.

Subscribed and sworn to before me this 22d day of January A. D. 1902.

[Seal] J. J. GREIF,
Deputy County Clerk.

To Messrs. E. S. Pillsbury and Alfred Sutro, Attorneys for Complainant.

You will please take notice that on Saturday, the 25th day of January, A. D. 1902, at the hour of 11 o'clock A. M., I will apply to the clerk of said Court to have the within memorandum of costs and disbursements taxed pursuant to the rule of said court, in such case made and provided.

FRANKLIN K. LANE,
Attorney for Respondent.

Service of within memorandum of costs and disbursements, and receipt of a copy thereof, acknowledged this 22d day of January, A. D. 1902.

E. S. PILLSBURY,
ALFRED SUTRO,
Attorneys for Complainants.

[Endorsed]: Filed this 22d day of January, A. D. 1902. Southard Hoffman, Clerk. By W. B. Beaizley, Deputy Clerk.

Certificate to Enrollment.

Whereupon, said pleadings, subpoenas, copy of order, a final decree, and a memorandum of taxed costs, are hereto annexed; said final decree being duly signed, filed, and enrolled, pursuant to the practice of said Circuit Court.

Attest my hand and the seal of said Circuit Court this 26th day of May, 1902.

[Seal] SOUTHARD HOFFMAN,
Clerk.
By W. B. Beaizley,
Deputy Clerk.

[Endorsed]: Enrolled Papers. Filed May 26th, 1902. Southard Hoffman, Clerk. By W. B. Beaizley, Deputy Clerk.

In the Circuit Court of the United States, Ninth Circuit, Northern District of California.

IN EQUITY.

THE SAN FRANCISCO NATIONAL BANK,
Complainant,
vs.
WASHINGTON DODGE, as Assessor of the City and County of San Francisco, State of California,
Respondent.
No. 12,928.

Monday, June 25, 1900.

Opinion on Application for an Injunction Pendente Lite.

E. S. PILLSBURY and ALFRED SUTRO, Solicitors for Complainant.

FRANKLIN K. LANE, City Attorney, for Respondent.

MORROW, Circuit Judge.—This is an application on the part of the complainant for an injunction pendente lite, restraining and enjoining the defendant, as Assessor of the City and County of San Francisco, from making an assessment upon the shares of the capital stock of the complainant for the fiscal year ending June 30, 1901.

This Court is of the opinion that a temporary injunction should not issue to restrain the assessor from making the assessment described in the bill in this case. That officer should be permitted to determine the elements and to make an official record of the amount of the taxes he deems the complainant liable to under the statute. The issues raised by the allegations of the bill and the admissions and denials of the answer as to the elements and the amount of the taxes, ought to be fully determined while the Assessor has the authority to act. Moreover, when this amount is fixed, the controversy is clearly defined once for all; and if the tax is finally sustained, the principal sum upon which interest and costs and other liabilities may accrue may have been determined, so that the city and county may not suffer any loss by reason of this action to determine the legality of the taxes.

A preliminary injunction will therefore be denied and the pending restraining order be dissolved; without prejudice, however, to the right of the complainant upon a supplemental bill or other pleading to apply for an injunction, if so advised, to restrain the Assessor from collecting the tax after an assessment has been made, if one is made; and this order is made upon the condition that the complainant shall have the opportunity of making such an application to the Court before the collection of the tax is enforced or attempted to be enforced by the defendant.

[Endorsed]: Filed June 25, 1900. Southard Hoffman, Clerk. By W. B. Beaizley, Deputy Clerk.

In the Circuit Court of the United States, Ninth Circuit, Northern District of California.

THE SAN FRANCISCO NATIONAL BANK a National Banking Association),

Complainant,

vs.

WASHINGTON DODGE, as Assessor of the City and County of San Francisco, State of California,

Respondent.

No. 12,928.

Agreed Facts.

It is hereby stipulated and agreed by and between the respective parties to the above-entitled action, that upon the hearing or any further proceeding that may be had in the above-entitled cause the following facts shall be deemed and taken to be true for the purposes thereof; subject, however, to objections to their relevancy, competency, or materiality, that is to say—

I.

The facts stated in paragraphs first, second, third, fourth, fifth, sixth, seventh, and tenth of the original bill of complaint in the above-entitled cause are true.

That on the first Monday in March, 1900, to wit, on March 5, 1900, at 12 o'clock M. of said day, complainant did not own any real estate, either in the city and county of San Francisco, State of California, or elsewhere.

That on the first Monday in March, 1900, to wit, on March 5, 1900, at 12 o'clock M. of said day, complainant owned, possessed, and controlled the following personal property, and none other: $50,000 of bonds of the United States; the premium on said bonds having on said day at said time been the sum of $4,800, making the said $50,000 of United States bonds with premium thereon, equal to the sum of $54,800; $175,784 in cash; furniture of the value of $5,450; solvent credits over and above the debts due and owing by complainant, amounting to the sum of $343,663.32; redemption fund, $2,250; a correct statement of the entire assets and liabilities of said San Francisco National Bank, on the first Monday in March, 1900, at twelve o'clock M. of said day, being in the words and figures following:

RESOURCES.

Loans and Discounts	$1,382,330.39
U. S. Bonds	50,000.00
Overdrafts	4,293.26
Premiums on U. S. bonds	4,800.00
Cash on hand and due from banks	390,915.13
Redemption fund (5% of circulation)	2,250.00
Total	$1,840,038.78

LIABILITIES.

Capital stock paid in	$ 500,000.00
Undivided profits	81,911.32
Deposits	1,258,127.46
Total	$1,840,038.78

II.

That there are 1217 shares of the capital stock of complainant the tax on which is unsecured by real estate owned by the holders thereof. That the said taxes on 1217 shares, at the said rate of $1.63 on each one hundred dollars' valuation, as specified in paragraph sixth of said original bill of complaint, and at the said valuation of $104.36, per share, as specified in paragraph tenth of said original bill of complaint, amount to the sum of $2,071.58.

III.

That the tabular statement hereto annexed, marked Exhibit "A," which is hereby referred to and made part hereof, truly and correctly shows the financial condition of the commercial banks of California at the close of business on the 5th day of March, A. D. 1900, at twelve o'clock M. of said day, as reported to the Bank Commissioners of the State of California, organized and acting under that certain act of the legislature of the State of California, entitled, "An act creating a Board of Bank Commissioners and prescribing their duties and powers, approved March 30, 1878; and the several acts of the legislature of said State of California amendatory thereof and supplementary thereto." That said commercial banks were and are corporations organized and acting under the laws of the State of California, and were and are citizens of the State of California, and are assessed and pay taxes in the manner and form prescribed by the laws of the State of California; and that the solvent credits owned and held by said banks on said first Mon-

day in March, 1900, were and are, moneyed capital in the hands of individual citizens of the State of California, to wit, said corporation, which enters into competition in business with complainant. The said banks and said property were so assessed and taxed for the fiscal year ending June 30th, 1901, and the franchises of said commercial banks and trust companies were also assessed to such companies.

That the manner in which the franchises of commercial banks and trust companies were assessed for said fiscal year ending June 30th, 1901, by the Assessor of the city and county of San Frascisco, is illustrated by the case of The Bank of California, a banking corporation organized under the laws of the State of California, and which on said 5th day of March, 1900, had and now has its principal place of business in the said city and county of San Francisco. On the 5th day of March, 1900, the resources of The Bank of California were as follows:

Bank premises	$ 250,000.00
Real estate taken for debt	293,629.27
U. S. Bonds	1,203,380.95
Stocks and bonds of California corporations	1,273,118.86
Furniture	1,000.00
Library	500.00
Typewriter	50.00
Money on hand	2,135,224.00
Total	$5,906,403.08

That the market value of the stock of The Bank of California on said 5th day of March, 1900, was $405 per share, and that on said day there were issued and out-

standing twenty thousand shares of the capital stock of said bank. That the Assessor of said city and county assessed to The Bank of California for the fiscal year ending June 30th, 1901, the following property as held and owned by The Bank of California at twelve o'clock M. on March 5th, 1900.

Real estate	$ 105,000
Improvements thereon	70,000
Furniture	1,000.
Library	500
Money	2,135,224
Typewriter	50
Franchise	750,000
Total	$3,061,774

That on the first Monday in March, 1900, there were shares of stock in banking corporations amounting to the sum of $30,000,000 in said State.

That the ownership of the shares of stock of complainant may and does change by endorsement and transfer of the certificate or certificates evidencing and representing any given number of shares, without there being any change in the name or names in which the said certificate or certificates stand upon the books of complainant; and ownership thereof may and does change intermediate twelve o'clock noon of the first Monday in March, annually, and the time of the making of the assessment by the Assessor of said City and County of San Francisco as required by law. That said bill of complaint correctly states the number of stockholders and shareholders of complainant as herein alleged.

IV.

That on June 30, A. D. 1900, said Washington Dodge, as Assessor as aforesaid, did make and complete his assessment-book in manner aforesaid, and therein did assess the stock of complainant in manner aforesaid and set down therein the tax on said 1,217 shares at the sum of $2,071.58; payment of which sum of money he, said Assessor, did on June 30, A. D. 1900, demand of complainant in said City and County of San Francisco, and did then and there inform complainant that if payment of the same were not made to him, he would proceed to collect and enforce collection and payment of the same as alleged in the supplemental bill of complaint in the above-entitled cause; and the assessment of the capital stock of complainant in said supplemental bill of complaint alleged and in the answer to said supplemental bill alleged, was made in the mode and manner hereinbefore described, and the same constitutes the assessment of the capital stock of complainant for the fiscal year ending June 30, 1901.

V.

That theretofore, to wit, on the 23d day of March, 1900, and before the assessment of said shares of stock of complainant, respondent caused to be addressed and mailed to the shareholders of complainant, and each of them who owned, claimed, possessed or controlled any

share of the capital stock of complainant, at twelve o'clock noon on the first Monday in March, 1900, a written notice. That such notices were as follows, to wit:

"San Francisco, March 23, 1900.

John Smith, 498 Montgomery St.

Dear Sir: As you are the owner of National Bank stock, you will be assessed as authorized by law as follows:

Shares of the First National Bank, S. F.

50 shares of the S. F. National Bank, S. F., $5218

Shares of the Nevada National Bank, S. F.

Shares of the Crocker-Woolworth Nat. Bank, S. F.

The assessment will be attached to any real estate you may own in the city and county. If you are not the owner of any realty, such steps for the immediate collection of the tax, as authorized by law will be taken.

If you have any exemptions or reductions allowed by law, please call at the Assessor's office, City Hall, San Francisco, and present them within ten days from the date hereof.

Respectfully,

WASHINGTON DODGE,

Assessor."

That in response to such notice and invitation or request, the said shareholders of complainant did not, nor did any one of them, make any return or statement, or

avail themselves of such invitation or request, of any debts unsecured by trust deed, mortgage or other lien on real or personal property due or owing by them, or any of them, to bona fide residents of the State of California.

That the complainant did not, nor did any officer or agent thereof, make or return a statement of any debts due or owing by such complainant, unsecured by trust deed, mortgage, or other lien on real or personal property, to bona fide residents of the State of California, nor did complainant, or any officer or agent of complainant ask or request such reduction or deduction whatsoever.

FRANKLIN K. LANE,

Attorney and Solicitor for Respondent.

E. S. PILLSBURY,

Attorney and Solicitor for Complainant.

W. S. WOOD,

ALFRED SUTRO,

Of Counsel.

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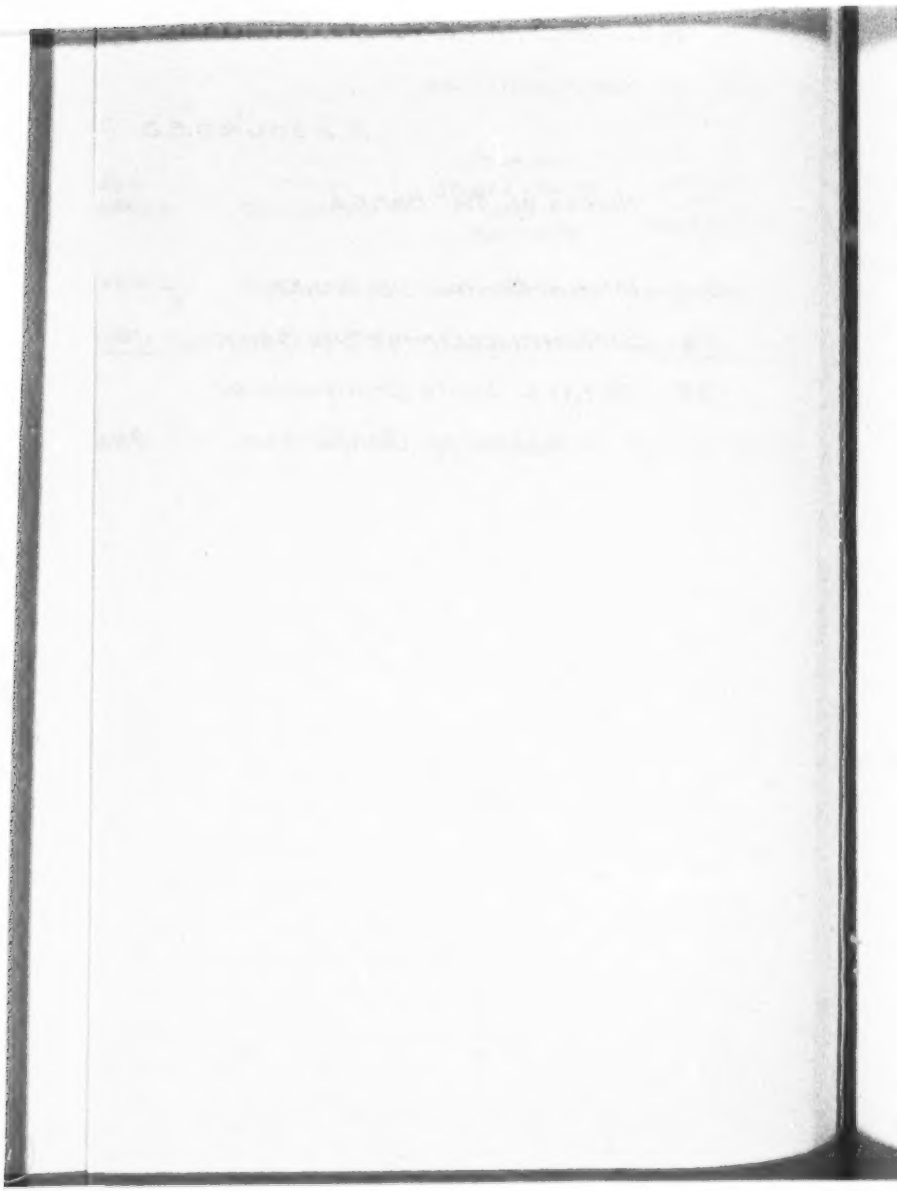

In the Circuit Court of the United States, Ninth Circuit, Northern District of California.

THE SAN FRANCISCO NATIONAL BANK (A National Banking Association),
Complainant,
vs.
WASHINGTON DODGE, as Assessor of the City and County of San Francisco,
Respondent.
No. 12,928.

Petition for Appeal.

To the Honorable, the Circuit Court Above Named:

Your petitioner, the complainant in the above-entitled cause, represents that there is manifest error committed to the injury of petitioner in the final decree pronounced in this case against it in favor of the respondent therein, filed and entered herein on the 26th day of May, 1902, and your petitioner is entitled to an appeal herein.

Wherefore, your petitioner, considering itself aggrieved by the decision of this Honorable Court, prays for an appeal from said final decree to the United States Circuit Court of Appeals for the Ninth Circuit.

Your petitioner herewith files its bond in the penal sum of $500, which bond is approved by the Honorable J. J. De Haven, one of the Judges of this Court, and ap-

pellant also files its assignment of errors with its petition.

W. S. WOOD,
E. S. PILLSBURY,
ALFRED SUTRO,
Solicitors for Complainant and Appellant.

[Endorsed]: Service of the within Petition for Appeal, by copy, admitted this 25th day of November, A. D. 1902.

FRANLIN K. LANE,
Per ASHER,
Attorney for Respondent.

Filed November 25, 1902. Southard Hoffman, Clerk. By W. B. Beaizley, Deputy Clerk.

In the Circuit Court of the United States, Ninth Circuit, Northern District of California.

THE SAN FRANCISCO NATIONAL BANK (A National Banking Association),
Complainant,
vs.
WASHINGTON DODGE, as Assessor of the City and County of San Francisco,
Respondent.
No. 12,928.

Assignment of Errors.

Now comes The San Francisco National Bank, the complainant in the above-entitled cause, and makes the

following assignment of errors in the decree of the Circuit Court herein, namely:

First.—The Court erred in granting the decree entered in the above-entitled cause on the 26th day of May, 1902.

Second.—The Court erred in adjudging and decreeing that that certain act of the legislature of the State of California in the bill of complaint in said cause mentioned enacted March 14, 1899, entitled "An act to amend section three thousand six hundred and eight of the Political Code of the State of California relating to the general revenue of the State and to property liable to taxation for the purpose of revenue, and to add new sections to be known as sections three thousand six hundred and nine and three thousand six hundred and ten, also relating to the general revenue of the State and to property liable to taxation for the purpose of revenue," was and is constitutional and valid.

Third.—The Court erred in adjudging and decreeing that said last-mentioned act of the legislature is not contrary to the provisions of the fourteenth amendment of the Constitution of the United States, and not contrary to the provisions of section one of article XIII of the Constitution of the State of California.

Fourth.—The Court erred in adjudging and decreeing that said act of the legislature is not in violation of and repugnant to the provisions of section five thousand two hundred and nineteen of the Revised Statutes of the United States, in that the assessment and tax therein and thereby authorized and provided for, is at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens in the State of California.

Fifth.—The Court erred in adjudging and decreeing that said act of the legislature did not, and does not, deprive complainant and the shareholders of complainant of their property without due process of law.

Sixth.—The Court erred in adjudging and declaring that said act of the legislature of the State of California was not, and is not, upon its face, void for contradiction and inconsistency:

Seventh.—The Court erred in adjudging and decreeing that said act of the legislature of the State of California was not void as providing for and authorizing a mode of the assessment and taxation of shares of the capital stock of national banking associations different from that authorized and provided for the assessment and taxation of the shares of stock in corporations organized and acting under the laws of the State of California, and in adjudging and declaring that under the provisions of said act, the shares of the shareholders of complainant were not assessed at a greater rate than that authorized and provided for the assessment and taxation of shares of stock in corporations organized and acting under the laws of the State of California.

Eighth.—The Court erred in adjudging and decreeing that under the laws of the State of California and the fourteenth amendment to the Constitution of the United States, as well as the provisions of the Constitution of the State of California, the legislature of said State, in and by the provisions of said act, could lawfully authorize a mode of taxation of the shares of the capital stock of complainant other and different from and more bur-

densome than that authorized and provided for the assessment and taxation of other shares of capital stock in corporations organized and acting under the laws of the State of California.

Ninth.—The Court erred in adjudging and decreeing that in making the assessment in the pleadings herein complained of, the Assessor of said City and County of San Francisco did comply with the requirements of the provisions of section three thousand six hundred and nine of said act of the legislature.

Tenth.—The Court erred in adjudging and decreeing that said Assessor did not violate the provisions of said section three thousand six hundred and nine of said act of the legislature.

Eleventh.—The Court erred in adjudging and decreeing that said Assessor in making said assessment in the pleadings herein complained of, did deduct from the value of the shares of the shareholders of complainant such sum as was or is in the same proportion to such value as the total value of, the real estate and property exempt by law from taxation bears to the whole value of all the shares of the capital stock of complainant.

Twelfth.—The Court erred in adjudging and declaring that said Assessor, in making said assessment, was legally entitled to assess the corporate property of complainant other than real estate; and that although such property and all thereof has been adjudged and declared not subject to State taxation and should be deducted from any assessment made under the Constitution and laws of the State of California, that said assessment so made

by said Assessor was not illegal and invalid, although it did include the same.

Thirteenth.--The Court erred in adjudging and declaring that in assessing the shares of the shareholders of complainant, said Assessor was legally entitled, in making such assessment, to apply a rule of valuation different from that applied in the assessment of all other property in the State of California, and particularly in the assessment of the property of corporations organized and acting under the laws of the State of California, and more onerous and burdensome than that applied in assessing other moneyed capital in the hands of individual citizens of said State.

Fourteenth.—The Court erred in adjudging and declaring the assessment made by said Assessor as in the pleadings herein stated was not invalid, illegal and void; although in making the same the said Assessor, in assessing the shares of the shareholders of complainant, applied the rule not of the valuation of the property of such shareholders, but superadded thereto goodwill of the business of complainant and including in estimating the value of such shares the property under the constitution and laws of the United States and of the State of California exempt from taxation, and in respect to which said shareholders were not and are not liable to assessment and taxation.

Fifteenth.—The Court erred in adjudging and declaring that in making said assessment as in the pleadings alleged and admitted, said assessor did not act in contravention of the provisions of the fourteenth amendment of the Constitution of the United States and of the

provisions of section five thousand two hundred and nineteen of the Revised Statutes of the United States; although in making said assessment, in allowing deductions, said Assessor only allowed the par value of the United States bonds held and owned by complainant and not the premium added thereto, while in ascertaining the value of the shares of the capital stock of complainant, said Assessor did include the amount of the premium upon said United States bonds and securities.

Sixteenth.—The Court erred in not granting the relief prayed by complainant in its original and several supplemental bills in the above-entitled cause.

Dated San Francisco, November 25th, A. D. 1902.

W. S. WOOD,
E. S. PILLSBURY,
ALFRED SUTRO,
Solicitors for Complainant.

Of Counsel.

[Endorsed]: Service of the within Assignment of Errors, by copy, admitted this 25th day of November, A. D. 1902.

FRANKLIN K. LANE,
Per ASHER,
Attorney for Respondent.

Filed November 25, 1902. Southard Hoffman, Clerk. By W. B. Beaizley, Deputy Clerk.

At a stated term, to wit, November term A. D. 1902, of the Circuit Court of the United States of America, Ninth Judicial Circuit, in and for the Northern District of California, held at the courtroom in the City and County of San Francisco, on Tuesday, the 25th day of November, in the year of our Lord one thousand nine hundred and two, the Honorable J. J. DE HAVEN, District Judge.

THE SAN FRANCISCO NATIONAL BANK (a National Banking Association),
Complainant,
vs.
WASHINGTON DODGE, as Assessor of the City and County of San Francisco,
Respondent.
No. 12,928.

Order Allowing Appeal.

Upon motion of W. S. Wood, Esq., one of the solicitors for complainant, and upon filing of a petition for an order allowing an appeal, an assignment of errors and an undertaking on appeal, approved in the sum of $500--

It is ordered that complainant be, and it is hereby, allowed an appeal to the United States Circuit Court of Appeals for the Ninth Circuit from the final decree filed and entered in the above-entitled cause on May 26th, A. D. 1902, and that a certified transcript of the record

and proceedings herein be transmitted to said United States Circuit Court of Appeals for the Ninth Circuit.

JOHN J. DE HAVEN,
Judge.

[Endorsed]: Service of the within Order Allowing Appeal, by copy, admitted this 25th day of November, A. D. 1902.

FRANKLIN K. LANE,
Per ASHER,
Attorney for Respondent.

Filed November 25, 1902. Southard Hoffman, Clerk. By W. B. Beaizley, Deputy Clerk.

In the Circuit Court of the United States, Ninth Circuit, Northern District of California.

THE SAN FRANCISCO NATIONAL BANK (a National Banking Association),
Complainant,
vs.
WASHINGTON DODGE, as Assessor of the City and County of San Francisco,
Respondent.
No. 12,928.

Undertaking on Appeal.

Whereas, the San Francisco National Bank, complainant in the above-entitled cause, is about to appeal to the United States Circuit Court of Appeals for the Ninth

Circuit from the decree of the Circuit Court of the United States in and for the Northern District of California entered in said suit on May 26th, 1902, in favor of the respondent therein, and against The San Francisco National Bank aforesaid, denying to said complainant the relief prayed in and by its original bill of complaint and its several supplemental bills of complaint in said suit filed—

Now, therefore, in consideration of the premises and of such appeal, the undersigned do hereby undertake and promise, on the part of The San Francisco National Bank aforesaid, appellant, that the said appellant shall prosecute its said appeal to effect, and if it fail to make its plea good, shall answer and pay to said Washington Dodge all costs that may be awarded against it on the appeal or on a dismissal thereof, not exceeding the sum of five hundred dollars ($500), to which amount they acknowledge themselves bound.

S. G. MURPHY.
J. K. MOFFITT.

State of California,
City and County of San Francisco. } ss.

S. G. Murphy and J. K. Moffitt, being sworn, each for himself, says: That he is a freeholder in the Northern District of California, and is worth the sum of five hundred dollars over and above all his just debts and liabilities, exclusive of property exempt from execution.

S. G. MURPHY.
J. K. MOFFITT.

Subscribed and sworn to before me this 25th day of November, 1902.

[Seal] PERCY E. TOWNE,

Notary Public in and for the City and County of San Francisco, State of California.

The foregoing undertaking is approved this 25th day of November, A. D. 1902.

JOHN J. DE HAVEN,
Judge.

[Endorsed]: Filed November 25th, 1902. Southard Hoffman, Clerk. By W. B. Beaizley, Deputy Clerk.

In the Circuit Court of the United States, Ninth Judicial Circuit, Northern District of California.

THE SAN FRANCISCO NATIONAL BANK (a National Banking Association),
Complainant,
vs.
WASHINGTON DODGE, as Assessor of the City and County of San Francisco,
Respondent.
No. 12,928.

Clerk's Certificate to Record on Appeal.

I, Southard Hoffman, clerk of the Circuit Court of the United States of America, of the Ninth Judicial Circuit,

in and for the Northern District of California, do hereby certify the foregoing pages, numbered from 1 to 88, inclusive, to be a full, true and correct copy of the record and proceedings in the above-entitled cause, and that the same together constitute the transcript of the record herein upon appeal to the United States Circuit Court of Appeals for the Ninth Circuit.

I further certify that the original citation issued in said cause is annexed hereto, and that the cost of the foregoing transcript of record is $58.40, which said sum was paid by The San Francisco National Bank, complainant.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Circuit Court, this 18th day of December, A. D. 1902.

[Seal] SOUTHARD HOFFMAN,

Clerk of the United States Circuit Court, Ninth Judicial Circuit, Northern District of California.

Citation.

The President of the United States to Washington Dodge, as Assessor of the City and County of San Francisco, State of California, Greeting:

You are hereby cited and admonished to be and appear at the United States Circuit Court of Appeals for

the Ninth Circuit, to be holden at the city of San Francisco, in the State of California, on Monday, December 22d, A. D. 1902, pursuant to an order allowing appeal made and entered in the clerk's office of the Circuit Court of the United States for the Ninth Circuit, Northern District of California, in a certain action numbered upon the register of actions of said Circuit Court No. 12,928, wherein The San Francisco National Bank, a national banking association, is appellant, and Washington Dodge, as Assessor of the City and County of San Francisco, State of California, is appellee, to show cause, if any there be, why the decree rendered against said appellant as in the said order allowing appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable J. J. DE HAVEN, Judge of the United States Circuit Court, Ninth Circuit, Northern District of California, ths 25th day of November, A. D. 1902.

JOHN J. DE HAVEN,
Judge.

Service of the within citation by copy, admitted this 25th day of November, A. D. 1902.

FRANKLIN K. LANE,
Per ASHER,
Attorney for Respondent.

[Endorsed]: No 12,928. United States Circuit Court, Ninth Circuit, Northern District of California. The San Francisco National Bank vs. Washington Dodge, as Assessor, etc. Citation. Filed November 25, 1902. Southard Hoffman, Clerk. By W. B. Beaizley, Deputy Clerk.

[Endorsed]: No. 926. In the United States Circuit Court of Appeals for the Ninth Circuit. The San Francisco National Bank, a National Banking Association, Appellant, vs. Washington Dodge, as Assessor of the City and County of San Francisco, Appellee. Transcript of Record. Upon Appeal from the United States Circuit Court for the Northern District of California.

Filed December 18, 1902.

F. D. MONCKTON,
Clerk.

PROCEEDINGS

HAD IN THE

UNITED STATES CIRCUIT COURT OF APPEALS

FOR THE NINTH CIRCUIT.

At a stated term, to wit, the October term, A. D. 1902, of the United States Circuit Court of Appeals for the Ninth Circuit, held at the courtroom, in the City and County of San Francisco, on Monday, the fifth day of January in the year of our Lord one thousand nine hundred and three. Present: The Honorable WILLIAM W. MORROW, Circuit Judge; The Honorable CHARLES B. BELLINGER, District Judge; The Honorable JOHN J. DE HAVEN, District Judge.

THE SAN FRANCISCO NATIONAL BANK (a National Banking Association),
Appellant,
vs.
WASHINGTON DODGE, as Assessor of the City and County of San Francisco,
Appellees.
} No. 926.

Order of Submission, Etc.

Upon motion of W. S. Wood, Esquire, counsel for the appellant, and upon the filing of a stipulation of counsel for the respective parties therefor, ordered appeal sub-

mitted to Bellinger and De Haven, District Judges, for consideration and decision upon the briefs heretofore filed in the case of The Nevada National Bank of San Francisco, etc., Appellant, vs. Washington Dodge, as Assessor, etc., et al., No. 794.

Thereupon, upon due consideration thereof, and it appearing to the Court that the case at bar involves the same questions that were determined by this Court in the case of The Nevada National Bank of San Francisco, etc., Appellant, v. Washington Dodge, etc., et al., Appellees, No. 794, it is ordered that a decree be entered herein affirming the decree of the Circuit Court of the United States for the Northern District of California, with costs.

It is further ordered that, in the event of the prosecution of an appeal of this case to the Supreme Court of the United States, a copy of the opinion of this Court in the case of The Nevada National Bank of San Francisco, etc., Appellant, vs. Washington Dodge, etc., et al., Appellees, No. 794, be made a part of the transcript of record on appeal.

United States Circuit Court of Appeals, for the Ninth Circuit.

THE SAN FRANCISCO NATIONAL BANK (a National Banking Association),
Appellant,
vs.
WASHINGTON DODGE, as Assessor of the City and County of San Francisco,
Appellee.
No. 926.

Decree.

Appeal from the Circuit Court of the United States for the Northern District of California.

This cause came on to be heard on the transcript of the record from the Circuit Court of the United States for the Northern District of California and was duly submitted to the Court for consideration and decision upon the briefs heretofore filed in the case of The Nevada National Bank of San Francisco, a National Banking Association, Appellant, vs. Washington Dodge, as Assessor of the City and County of San Francisco, State of California, and Joseph H. Scott, as Tax Collector of said City and County, Appellees, No. 794.

On consideration whereof, and it appearing to the Court that this case involves the same questions determined by this Court in the case of The Nevada National Bank of San Francisco, a National Banking Association, Appellant, vs. Washington Dodge, as Assessor of the

City and County of San Franciesco, State of California, and Joseph H. Scott, as Tax Collector of said City and County, Appellees, No. 794, it is ordered, adjudged, and decreed by this Court, upon the authority of the said case, that the decree of the said Circuit Court in this cause be, and the same is hereby, affirmed, with costs.

[Endorsed]: Decree. Filed and entered January 5th, 1903. F. D. Monckton, Clerk.

In the United States Circuit Court of Appeals for the Ninth Circuit.

THE NEVADA NATIONAL BANK OF SAN FRANCISCO (a National Banking Association),
Appellant,
vs.
WASHINGTON DODGE, as Assessor of the City and County of San Francisco, State of California, and JOSEPH H. SCOTT, as Tax Collector, of said City and County,
Appellees.
No. 794.

Opinion.

Appeal from the Circuit Court of the United States for the Northern District of California.

T. I. BERGIN, for Appellant.

FRANKLIN K. LANE, City Attorney, and W. I. BROBECK, Assistant City Attorney, for Appellees.

Before GILBERT, Circuit Judge, and HAWLEY and De HAVEN, District Judges.

DE HAVEN, District Judge.—The appellant is a national banking association with its principal place of business at San Francisco in the State of California, and the bill of complaint in this case was filed by it to enjoin the assessmentof its sharesof stock to the individual owners thereof; and the assessment having been made, supplemental bills were filed by it to restrain the collection of the taxes levied upon the assessed value of such shares. The case was submitted to the Circuit Court for decision upon the pleadings and upon an agreed statement of facts, and thereupon a decree was entered by that Court dismissing the bill and supplemental bills. The assessment in question was made under an act of the legislature of the State of California, approved March 14, 1899 (Statutes of 1899, page 96), amending sections 3608 and 3609 of the Political Code of the State of California, and adding thereto a new section, numbered 3610. The sections referred to are as follows:

"3608. Shares of stock in corporations possess no intrinsic value over and above the actual value of the property of the corporation which they stand for and represent; and the assessment and taxation of such shares, and also all the corporate property, would be double taxation. Therefore, all property belonging to corporations, save and except the property of national banking associations not assessable by federal statute, shall be assessed and taxed. But no assessment shall be made of shares of stock in any corporation, save and except in national banking associations, whose property, other than real estate, is exempt from assessment by federal statute."

"3609. The stockholders in every national banking association doing business in this State, and having its principal place of business located in this State, shall be assessed and taxed on the value of their shares therein; and said shares shall be valued and assessed as is other property for taxation, and shall be included in the valuation of the personal property of such stockholders in the assessment of the taxes at the place, city, town, and county where such national banking association is located, and not elsewhere, whether the said stockholders reside in said place, city, town, or county, or not; but in the assessment of such shares, each stockholder shall be allowed all the deductions permitted by law to the holders of moneyed capital in the form of solvent credits, in the same manner as such deductions are allowed by the provision of paragraph six of section thirty-six hundred and twenty-nine of the Political Code of the State of California. In making such assessment to each stockholder, there shall be deducted from the value of his shares of stock such sum as is in the same proportion to such value as the total value of its real estate and property exempt by law from taxation bears to the whole value of all the shares of capital stock in said national bank. And nothing herein shall be construed to exempt the real estate of such national bank from taxation. And the assessment and taxation of such shares of stock in said national banking associations shall not be at a greater rate than is made or assessed upon other moneyed capital in the hands of individual citizens of this State."

"3610. The assessor charged by law with the assessment of said shares shall, within ten days after he has made such assessment, give written notice to each national banking association of such assessment of the shares of its respective shareholders; and no personal or other notice to such shareholders of such assessment shall be necessary for the purpose of this act. And in case the tax on any such stock is unsecured by real estate owned by the holder of such stock, then the bank in which said stock is held shall become liable therefor; and the assessor shall collect the same from said bank; which may then charge the amount of the tax so collected to the account of the stockholder owning such stock, and shall have a lien, prior to all other liens, on his said stock, and the dividends and earnings thereof, for the reimbursement to it of such taxes so paid."

1. It is claimed by appellant that this statute is inoperative and void, because of the following direction contained in section 3609 of the Political Code above set out:

"In making such assessment to each stockholder, there shall be deducted from the value of his shares of stock such sum as is in the same proportion to such value as the total value of the real estate and property exempt by law from taxation bears to the whole value of all the shares of capital stock in said national bank."

It is argued that this is a specific direction by which the assessor must be governed, and as all the property of a national bank, except the real estate owned by it, is exempt by law from State taxation, the deductions which are thus directed to be made will leave nothing

of value in the shares to assess, and, quoting the language of counsel for appellant: "Thus is presented the case of a legislative mandate to exempt from assessment the whole subject of assessment. This construction renders the statute inoperative and void." Unquestionably, if the sentence above set out is to be construed literally and without reference to the context, the proposition for which the appellant contends is not without support, but it is a general rule of construction that the intention of the legislature is to be collected from the whole and every part of the statute, and not from some particular clause or sentence therein, and if it is possible so to do, its language must be so interpreted that the statute will be operative, and absurd and mischievous results avoided; and, "it is one of the great maxims of interpretation to keep always in view the general scope, object, and purpose of the law rather than its mere letter." (Rutledge vs. Crawford, 91 Cal. 533.) "A rigid and literal meaning would, in many cases, defeat the very object of the statute, and would exemplify the maxim that 'The letter killeth, while the spirit keepeth alive.' Every statute ought to be expounded, not according to the letter, but according to the meaning. * * * And the intention is to govern, although such construction may not, in all respects, agree with the letter of the statute." (Tracy vs. Troy & Boston R. R. Co., 38 N. Y. 437.) The object of the statute under consideration, was to provide for the assessment and taxation of shares of stock in national banking associations; and it is expressly declared there-

in, that "the assessment and taxation of such shares of stock in said national banking association, shall not be at a greater rate than is made or assessed upon other moneyed capital in the hands of individual citizens of this state." Now, it is evident that the purpose of the legislature in further providing in the same section, that in the assessment of their shares certain deductions should be allowed stockholders in national banking associations, was to carry out this express declaration that the taxation of such shares should not be at a greater rate than that assessed upon other moneyed capital. This being so, the particular sentence relating to such deductions upon which appellant relies, should be construed as requiring the assessor to first deduct from the total value of all its shares of stock the value of the real estate and all other property owned by the national banking association which under the laws of the State would be exempt from taxation in the hands of owners of other moneyed or competing capital, and then to assess to each individual stockholder his proportionate part of the remainder. This construction brings the sentence under consideration in harmony with the other parts of the section in which it appears, and gives effect to the general object which the legislature had in view in the enactment of the statute.

2. Section 5219 of the Revised Statutes provides that "the legislature of each State may determine and direct the manner and place of taxing all the shares of national banking associations located within the State, subject only to the two restrictions that the taxation shall not

be at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens of such State, and that the shares of any national banking association owned by nonresidents of any State shall be taxed in the city or town where the bank is located and not elsewhere." It cannot be doubted that the State, in the taxation of shares of stock in national banking associations, must observe the restrictions contained in this section of the Revised Statutes. (People vs. Weaver, 100 U. S. 543; Owensboro National Bank vs. Owensboro, 173 U. S. 664.) In the case last cited, the Court referring to section 5219 of the Revised Statutes, said:

"This section, then, of the Revised Statutes is the measure of the power of a State to tax national banks, their property or their franchises. By its unambiguous provisions the power is confined to a taxation of the shares of stock in the names of the shareholders and to an assessment of the real estate of the bank. Any State tax, therefore, which is in excess of and not in conformity to these requirements is void."

The appellant contends that the statute of California relating to the assessment of shares in national banking associations is in conflict with that provision of section 5219 of the Revised Statutes, which declares that the taxation of such shares, "shall not be at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens of such State." The first ground urged in support of this proposition is that under the law of the State of California, the shares of local banking corporations are not subject to taxation but only the

property of such corporations, and it is argued that this difference in the mode of assessment imposes upon the owners of shares in national banking associations a greater burden of taxation than is imposed upon stockholders in local banking corporations. It is true that under the system of taxation in force in the State of California, when all of the property belonging to a corporation is assessed to the corporation itself the shares of such corporation are not assessable in the hands of individual shareholders. (Political Code of California, section 6308; Burke vs. Badlam, 57 Cal. 601.) In the case just cited, Mr. Justice Ross, in delivering the opinion of the Court, observed:

"Now, what is the stock of a corporation but its property consisting of its franchise and such other property as the corporation may own? Of what else does it consist? If all this is taken way, what remains? Obviously nothing. When, therefore, all of the property of the corporation is assessed—its franchise and all of its other property of every character—then all of the stock of the corporation is assessed, and the mandate of the constitution is complied with."

And it was further said in the same opinion:

"To assess all the corporate property of the corporation, and also to assess to each of the stockholders the number of shares held by him, would, it is manifest, be assessing the same property twice, once in the aggregate to the corporation, the trustee of all the stockholders, and again separately to the individual stockholders, in proportion to the number of shares held by each."

We are unable to see that under the system of assessment provided for in the California statute, shares in national banking associations are valued higher in proportion to their real value than moneyed or competing capital of local banking corporations. The mode of assessing such shares directly to the owners thereof is certainly different from the indirect method of assessing the interest of stockholders of local banking corporations in the property of such corporations, but under the statute as we interpret it, all property which if owned by a local banking corporation or citizen of the State would be exempt from taxation under the State law, is when owned by a national banking association to be deducted from the total value of its shares in ascertaining the value of such shares for the purpose of assessment. Under this mode of proceeding no greater burden of taxation is imposed upon capital invested in national banking associations than is placed upon competing moneyed capital in the hands of individual citizens or local banking corporations, and this being so, there is no conflict between the statute of the State and section 5219 of the Revised Statutes. In exercising the power conferred by this section of the Revised Statutes, the State is not required to change its system of taxation and assess the shares of stock of its own local bank corporations directly to the holders thereof so as to conform to the precise method which it follows in the assessment of shares of national banking associations. All that is required is, that shares in national banking associations shall not be taxed by the State at a higher

rate than other moneyed capital in the hands of individual citizens of the State. This was so expressly ruled in Davenport Bank vs. Davenport, 123 U. S. 85, in which case the Supreme Court, speaking through Mr. Justice Miller, said:

"It has never been held by the Court that the State should abandon systems of taxation of their own banks, or of the money in the hands of other corporations, which they may think the most wise and efficient modes of taxing their own corporate organizations, in order to make that taxation conform to the system of taxing the national banks upon the shares of their stock in the hands of their owners. All that has ever been held to be necessary is, that the system of State taxation of its own citizens, of its own banks, and of its own corporations, shall not work a discrimination unfavorable to the holders of the shares of the national banks. Nor does the act of Congress require anything more than this; neither its language nor its purpose can be construed to go any farther. Within these limits, the manner of assessing and collecting all taxes by the States is uncontrolled by act of Congress."

It is further urged by appellant that shareholders in national banking associations are not allowed by the statute under consideration to deduct from the value of the shares owned by them the amount of unsecured debts which they owe to bona fide residents of the State, while local banks and individuals are permitted under the system of taxation in force in California to make such deductions from the amount of unsecured solvent

credits owned by them, and that in this respect the statute is in conflict with section 5219 of the Revised Statutes. We think, however, that under section 3609 of the Political Code, such deductions are allowed to the stockholders of national banking associations. It is therein provided that, "in the assessment of such shares, each stockholder shall be allowed all the deductions permitted by law to the holders of moneyed capital in the form of solvent credits, in the same manner as such deductions are allowed by the provisions of paragraph six of section thirty-six hundred and twenty-nine of the Political Code of the State of California." If it should be conceded, as is claimed by appellant, that this language is not sufficient to authorize the assessor to make such deductions from the value of shares in national banking associations as are permitted by law to the holders of moneyed capital in the form of solvent credits, and this because such shares are not solvent credits, still authority for making such deductions is found in the further provision that, "the assessment and taxation of such shares of stock in said national banking association shall not be at a greater rate than is made or assessed upon other moneyed capital in the hands of individual citizens of this State." In order to effect this object, the assessor not only may, but, in our opinion, he is required in assessing shares of national banking associations, to make all deductions from the value of such shares which are permitted in the assessment of moneyed or competing capital of local banks and individual citizens of the State. But even if the statute

made no provision for such deductions, it would not follow that the assessment of which appellant complains is void, for it does not appear that any of its stockholders were indebted to bona fide residents of the State. (Supervisors vs. Stanley, 105 U. S. 305.)

3. The appellant also contends that the statute under which its shares were assessed is void, in that it does not provide for notice to the stockholders of the proceeding by which the assessment of their shares is to be made, and does not give to them an opportunity to be heard in relation thereto. Section 3610 of the Political Code provides that, "The assessor charged by law with the assessment of said shares shall, within ten days after he has made such assessment, give written notice to each national banking association of such assessment of the shares of its respective shareholders; and no personal or other notice to such shareholders of such assessment shall be necessary for the purpose of this act." We are unable to assent to the proposition that the notice thus provided for is insufficient when considered in connection with other sections of the Political Code of the State (sections 3672-3682), which provide for a board of equalization, with power to hear complaints respecting the justice of any assessment, and prescribe the time and place when and where such complaints may be heard. The shares of national banking associations are assessed under a general law of which the stockholder must take notice, and the time and place when and where he may appear for the purpose of applying for a reduction of the valuation placed upon his property is

fixed by a general law of which he must also take notice. This is, we think, under all of the authorities sufficient notice of proceedings for the assessment and taxation of property. In the language of the Supreme Court in Palmer vs. McMahon, 133 U. S. 669:

"The power to tax belongs exclusively to the legislative branch of the Government, and when the law provides for a mode of confirming or contesting the charge imposed, with such notice to the person as is appropriate to the nature of the case, the assessment cannot be said to deprive the owner of his property without due process of law."

And in Kentucky Railroad Tax Cases, 115 U. S. 321, it was said:

"It has, however, been repeatedly decided by this Court that the proceedings to raise the public revenue by levying and collecting taxes are not necessarily judicial and that 'due process of law,' as applied to that subject, does not imply or require the right to such notice and hearing as are considered to be essential to the validity of the proceedings and judgments of judicial tribunals. Notice by statute is generally the only notice given, and that has been held sufficient."

See, also, State vs. Runyon, 41 N. J. L. p. 98; Cooley on Taxation, pp. 265, 266.

It follows from what has been said that, in our opinion, the statute under which the assessment referred to in the bill of complaint was made, is valid, and the decree of the Circuit Court should be, and accordingly is, affirmed.

[Endorsed]: Opinion. Filed Oct. 6th, 1902. F. D. Monckton, Clerk.

In the United States Circuit Court of Appeals, for the Ninth Circuit.

THE SAN FRANCISCO NATIONAL BANK (a National Banking Association),
Complainant and Appellant,
vs.
WASHINGTON DODGE, as Assessor of the City and County of San Francisco,
Respondent and Appellee.
} No. 926.

Petition for Appeal.

To the Honorable, The Circuit Court of Appeals Above-named:

Your petitioner, the complainant and appellant in the above-entitled cause, represents that there is manifest error committed to the injury of petitioner in the decree of date January 5th, 1903, affirming the final decree pronounced in this case against it in favor of the respondent and appellee therein, filed and entered in the Circuit Court on the 26th day of May, 1902, and your petitioner is entitled to an appeal herein.

Wherefore, your petitioner, considering itself aggrieved by the decision of the Circuit Court, prays for an appeal from the decree affirming said final decree to the Supreme Court of the United States.

Your petitioner herewith files its bond in the penal sum of five hundred dollars, which bond is approved by the Honorable William B. Gilbert, one of the Judges of this Court, and appellant also files its assignment of errors with its petition.

LLOYD & WOOD,
E. S. PILLSBURY,
ALFRED SUTRO,
Solicitors for Complainant and Appellant.

[Endorsed]: Petition for Appeal. Filed Apr. 22, 1903. F. D. Monckton, Clerk.

In the United States Circuit Court of Appeals, for the Ninth Circuit.

THE SAN FRANCISCO NATIONAL BANK (a National Banking Association),
Complainant and Appellant,
vs.
WASHINGTON DODGE, as Assessor of the City and County of San Francisco,
Respondent and Appellee.
No. 926.

Assignment of Errors.

Now comes the San Francisco National Bank, the complainant and appellant in the above-entitled cause, and makes the following assignment of errors in the decree affirming the decree of the Circuit Court herein, namely:

First.—The Court erred in affirming the decree entered by the Circuit Court in the above-entitled cause on the 26th day of May, 1902.

Second.—The Court erred in affirming the decree entered by the Circuit Court adjudging and decreeing that that certain act of the legislature of the State of California in the bill of complaint in said cause mentioned enacted March 14, 1899, entitled "An act to amend section three thousand six hundred and eight of the Political Code of the State of California, relating to the general revenue of the State and to property liable to taxation for the purpose of revenue, and to add new sections to be known as sections three thousand six hundred and nine and three thousand six hundred and ten, also relating to the general revenue of the State and to property liable to taxation for the purpose of revenue," was and is constitutional and valid.

Third.—The Court erred in affirming the decree entered by the Circuit Court adjudging and decreeing that said last-mentioned act of the legislature is not contrary to the provisions of the fourteenth amendment of the Constitution of the United States, and not contrary to the provisions of section one of article XIII of the Constitution of the State of California.

Fourth.—The Court erred in affirming the decree entered by the Circuit Court adjudging and decreeing that said act of the legislature is not in violation of and repugnant to the provisions of section five thousand two hundred and nineteen of the Revised Statutes of the United States, in that the assessment and tax therein

and thereby authorized and provided for, is at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens in the State of California.

Fifth.—The Court erred in affirming the decree entered by the Circuit Court adjudging and decreeing that said act of the legislature did not, and does not, deprive complainant and appellant and the shareholders of complainant and appellant of their property without due process of law.

Sixth.—The Court erred in affirming the decree entered by the Circuit Court adjudging and declaring that said act of the legislature of the State of California was not, and is not, upon its face, void for contradiction and inconsistency.

Seventh.—The Court erred in affirming the decree entered by the Circuit Court adjudging and declaring that said act of the legislature of the State of California was not void as providing for and authorizing a mode of the assessment and taxation of shares of the capital stock of national banking associations different from that authorized and provided for the assessment and taxation of the shares of stock in corporations organized and acting under the laws of the State of California, and in adjudging and declaring that under the provisions of said act, the shares of the shareholders of complainant and appellant were not assessed at a greater rate than that authorized and provided for the assessment and taxation of shares of stock in corporations organized and acting under the laws of the State of California.

Eighth.—The Court erred in affirming the decree en-

tered by the Circuit Court adjudging and decreeing that under the laws of the State of California and the fourteenth amendment to the Constitution of the United States, as well as the provisions of the Constitution of the State of California, the legislature of said State, in and by the provisions of said act, could lawfully authorize a mode of taxation of the shares of the capital stock of complainant and appellant other and different from and more burdensome than that authorized and provided for the assessment and taxation of other shares of capital stock in corporations organized and acting under the laws of the State of California.

Ninth.—The Court erred in affirming the decree entered by the Circuit Court adjudging and decreeing that in making the assessment in the pleadings herein complained of, the Assessor of said City and County of San Francisco did comply with the requirements of the provisions of section three thousand six hundred and nine of said act of the legislature.

Tenth.—The Court erred in affirming the decree entered by the Circuit Court adjudging and decreeing that said Assessor did not violate the provisions of said section three thousand six hundred and nine of said act of the legislature.

Eleventh.—The Court erred in affirming the decree entered by the Circuit Court adjudging and decreeing that said Assessor in making said assessment in the pleadings herein complained of did deduct from the value of the shares of the shareholders of complainant and appellant such sum as was or is in the same proportion to

such value as the total value of the real estate and property exempt by law from taxation bears to the whole value of all the shares of the capital stock of complainant and appellant.

Twelfth.—The Court erred in affirming the decree entered by the Circuit Court adjudging and declaring that said Assessor, in making said assessment, was legally entitled to assess the corporate property of complainant and appellant other than real estate; and that although such property and all thereof has been adjudged and declared not subject to State taxation and should be deducted from any assessment made under the Constitution and laws of the State of California, that said assessment so made by said Assessor was not illegal and invalid, although it did include the same.

Thirteenth.—The Court erred in affirming the decree entered by the Circuit Court adjudging and declaring that in assessing the shares of the shareholders of complainant and appellant, said Assessor was legally entitled, in making such assessment, to apply a rule of valuation different from that applied in the assessment of all other property in the State of California, and particularly in the assessment of the property of corporations organized and acting under the laws of the State of California, and more onerous and burdensome than that applied in assessing other moneyed capital in the hands of individual citizens of said State.

Fourteenth.—The Court erred in affirming the decree entered by the Circuit Court adjudging and declaring the assessment made by said Assessor, as in the pleadings

herein stated, was not invalid, illegal, and void; although in making the same the said Assessor, in assessing the shares of the shareholders of complainant and appellant, applied the rule not of the valuation of the property of such shareholders, but superadded thereto goodwill of the business of complainant and appellant, and included, in estimating the value of such shares, the property under the constitution and laws of the United States and of the State of California exempt from taxation, and in respect to which said shareholders were not and are not liable to assessment and taxation.

Fifteenth.—The Court erred in affirming the decree entered by the Circuit Court adjudging and declaring that in making said assessment, as in the pleadings alleged and admitted, said assessor did not act in contravention of the provisions of the fourteenth amendment of the constitution of the United States and of the provisions of section five thousand two hundred and nineteen of the Revised Statutes of the United States; although in making said assessment, in allowing deductions, said Assessor only allowed the par value of the United States bonds held and owned by complainant and appellant and not the premium added thereto, while in ascertaining the value of the shares of the capital stock of complainant and appellant, said Assessor did include the amount of the premium upon said United States bonds and securities.

Sixteenth.—The Court erred in affirming the decree entered by the Circuit Court refusing to grant the relief

prayed by complainant and appellant in its original and several supplemental bills in the above-entitled cause.

Dated San Francisco, March 31st, 1903.

LLOYD & WOOD,
E. S. PILLSBURY,
ALFRED SUTRO,
Solicitors for Complainant and Appellant.

[Endorsed]: Assignment of Errors. Filed Apr. 22, 1903. F. D. Monckton, Clerk.

Bond on Appeal.

Know all men by these presents, that we, The San Francisco National Bank, a national banking association, as principal, and James K. Lynch and James K. Moffitt, as sureties, are held and firmly bound unto Washington Dodge, as Assessor of the City and County of San Francisco, in the full and just sum of five hundred dollars, to be paid to said Washington Dodge as such Assessor, or to his successors in interest and legal representatives; to which payment, well and truly to be made, we bind ourselves, our successors in interest and legal representatives, heirs, executors, and administrators, jointly and severally, by these presents. Sealed with our seals and dated this sixth day of April, in the year of our Lord one thousand nine hundred and three.

Whereas, lately at the United States Circuit Court of Appeals for the Ninth Circuit, in an appeal depending

in said Court between The San Francisco National Bank (a national banking association), and Washington Dodge, as Assessor of the City and County of San Francisco, a decree was duly given and made affirming the decree rendered against said The San Francisco National Bank by the United States Circuit Court in and for the Northern District of California, and the said The San Francisco National Bank having obtained from said Court of Appeals an order allowing an appeal to reverse the said decree on the aforesaid appeal, and a citation directed to the said Washington Dodge as Assessor of the City and County of San Francisco, citing and admonishing him as such Assessor, to be and appear at the Supreme Court of the United States, to be holden at the City of Washington, District of Columbia, within sixty days from the date thereof:

Now, the condition of the above obligation is such, that if the said The San Francisco National Bank, complainant and appellant as aforesaid, shall prosecute said appeal to effect and answer all damages and costs if it fail to make its plea good, then the above obligation to be void; else to remain in full force and virtue.

THE SAN FRANCISCO NATIONAL BANK. [Seal]
By JAMES K. WILSON, [Seal]
President.

[Seal of San Francisco National Bank]

JAMES K. LYNCH. [Seal]
J. K. MOFFITT. [Seal]

Acknowledged before me the day and year first above written.

[Seal] PERCY E. TOWNE,

Notary Public in and for the City and County of San Francisco, State of California.

United States of America,
Northern District of California } ss.

James K. Lynch and James K. Moffitt, being duly sworn, each for himself, deposes and says that he is a householder in said District, and is worth the sum of five hundred dollars, exclusive of property exempt from execution, and over and above all debts and liabilities.

JAMES K. LYNCH.
J. K. MOFFITT.

Subscribed and sworn to before me this 6th day of April, 1903.

[Seal] PERCY E. TOWNE,

Notary Public in and for the City and County of San Francisco, State of California.

[Endorsed]: Bond. Form of bond and sufficiency of securities approved.

WM. B. GILBERT,
Judge.

Filed Apr. 22, 1903. F. D. Monckton, Clerk.

In the United States Circuit Court of Appeals, for the Ninth Circuit.

THE SAN FRANCISCO NATIONAL BANK (a National Banking Association),
Complainant and Appellant,
vs.
WASHINGTON DODGE, as Assessor, etc.,
Respondent and Appellee.
} No. 926.

Order Allowing Appeal.

Upon motion of W. S. Wood, Esq., one of the solicitors for complainant and appellant, and upon filing of a petition for an order allowing an appeal, an assignment of errors, and a bond on appeal approved in the sum of $500—

It is ordered that complainant and appellant be, and it is hereby, allowed an appeal to the Supreme Court of the United States from the decree of this Court affirming the final decree filed and entered in the above-entitled cause by the Circuit Court on the 26th day of May, A. D. 1902, and that a certified transcript of the record and proceedings herein be transmitted to said Supreme Court of the United States.

WM. B. GILBERT,
Judge.

[Endorsed]: Order Allowing Appeal. Filed Apr. 22, 1903. F. D. Monckton, Clerk.

United States Circuit Court of Appeals, for the Ninth Circuit.

THE SAN FRANCISCO NATIONAL BANK (a National Banking Association),
Appellant,
vs.
WASHINGTON DODGE, as Assessor of The City and County of San Francisco,
Appellee.
No. 926.

Certificate of Clerk C. C. A. to Transcript of Record.

I, Frank D. Monckton, clerk of the United States Circuit Court of Appeals for the Ninth Circuit, do hereby certify the foregoing one hundred and twenty-nine (129) pages, numbered from one (1) to one hundred and twenty-nine (129), inclusive, to be a true copy of the record, assignment of errors, and of all proceedings in the above-entitled case, including a copy of the opinion in the case of The Nevada National Bank of San Francisco, a National Banking Association, Appellant, vs. Washington Dodge, as Assessor of the City and County of San Francisco, State of California, and Joseph H. Scott, as Tax Collector of said City and County, Appellees, No. 794, as the same appear of record in my office, and that the same, together, constitute the transcript of record herein on appeal to the Supreme Court of the United States.

Attest my hand and the seal of said United States Circuit Court of Appeals for the Ninth Circuit at San Francisco, California, this 29th day of April, A. D. 1903.

[Seal] F. D. MONCKTON,
Clerk.

Citation on Appeal.

UNITED STATES OF AMERICA—ss.

The President of the United States to Washington Dodge, as Assessor of the City and County of San Francisco. Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, to be holden at the city of Washington, District of Columbia, within sixty days from the date hereof, pursuant to an order allowing an appeal, of record in the clerk's office of the United States Circuit Court of Appeals, for the Ninth Circuit, wherein the San Francisco National Bank, a national banking association, is appellant, and you are appellee, to show cause, if any there be, why the decree of said Circuit Court of Appeals affirming the decree rendered against said appellant and by the Circuit Court of the United States in the Ninth Judicial Circuit in and for the Northern District of California, as in the said order allowing appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable WILLIAM B. GILBERT, United States Circuit Judge for the Ninth Judicial Circuit, this 20th day of April, A. D. 1903.

WM. B. GILBERT,
United States Circuit Judge.

Service and receipt of a copy this 22d day of April, 1903, is hereby admitted of the within citation, and petition for appeal, assignment of errors and order allowing appeal, all in the matter of the San Francisco National Bank vs. Washington Dodge, as Assessor, etc.

FRANKLIN K. LANE,
City Attorney,
Attorney for Respondent.

[Endorsed]: Citation. Filed Apr. 23, 1903. F. D. Monckton, Clerk.